Introduction

Mandatory Minimum Sentences

Crime and its punishment is a public policy concern in which the state legislature has a key role in defining. It is a judicial function to ensure the criminal laws are implemented fairly and in accordance with the law. If an arrested person is found guilty, it is a judicial function to set out the punishment of the individual on a case-by-case basis guided by the statutory parameters set out by the legislature.

The four traditional goals of punishment are: deterrence, incapacitation (incarceration), retribution, and rehabilitation. Over the years, the political and public views have changed on how these goals are balanced and which ones to promote. These changing views affect the legislature's view on sentencing and impact the discretion that a judge has in his or her sentencing decisions.

Mandatory minimum sentences, first established in Connecticut in 1969 and expanded throughout the 1980s and 1990s, exemplify a shift in public policy to impose a specific amount of imprisonment based on the crime committed and the defendant's criminal history, and away from other individual offender characteristics and circumstances. A mandatory minimum sentence requires a judge to impose a statutorily fixed sentence on individual offenders convicted of certain crimes, regardless other mitigating factors.

Based on legislator statements during debates on mandatory minimum sentence bills, the legislative purpose was multifaceted: reduce crime (and drug use); control judicial discretion over certain sentencing decisions; increase the prison sentences for serious and violent offenders; and send a message to the public and potential criminals that the legislature was taking action. Also, in recent years, legislators have noted the impact of plea bargaining on the actual use of mandatory minimum sentencing laws. It is widely accepted that mandatory minimum sentencing laws have not achieved their objectives and have resulted in unintended consequences such as sentencing inequities and unduly harsh penalties.

The issue of mandatory minimum sentences generates strong reactions for and against the policy. It should be noted that only certain crimes have absolute mandatory minimum sentences attached to them. In practice, because of a prosecutor's unilateral authority and discretion to charge an arrested person with a crime and the prevalence of plea bargaining, few defendants are ever actually incarcerated under a mandatory minimum penalty. Further, in 2001, the legislature provided judges with the discretion to deviate from the mandatory minimum penalty for certain drug sale offenses based on "good cause." This type of sentence is called presumptive sentencing.

The issue of mandatory minimum sentencing generates strong political and public reactions for and against such laws. Proponents of mandatory minimum sentencing penalties believe the laws:

- are an effective deterrent against certain serious offenses such as drug and weapon crimes and sexual assault offenses;
- protect against possible disparities in sentencing;
- keep convicted offenders incarcerated for longer periods of time (keeping these individuals off the streets will prevent new crimes); and
- aid prosecutors and police who use the possibility of lengthy prison terms to persuade lower-level offenders to testify against higher-level offenders and to convince offenders to plead guilty for a negotiated sentence.

Opponents of mandatory minimum sentences, on the other hand, argue there is no evidence that tougher sentences deter offenders from committing the specified serious offenses like drug sales. Instead, they state over the past 15 years, the prison populations in Connecticut and nationally have increased at a dramatic rate because of the longer mandatory sentences and time-served requirements. Accordingly, this has required larger increases in state prison budgets. Opponents contend:

- minority defendants are disproportionately incarcerated compared to Caucasian defendants under the mandatory minimum sentencing laws;
- sentencing disparity is inherent in the mandatory minimum sentencing law for the sale of the illegal drugs cocaine and "crack,"[1] and is perhaps an unintended consequence for other offenses; and
- many offenders sentenced under the mandatory minimum sentencing laws are by-and-large nonviolent and were not the intended targets of the sentencing policy. (They point out the serious and violent offenders who were the intended targets of mandatory minimum sentencing, absent these laws, typically receive long prison terms anyway.)

Judges support appropriate and fair penalties for serious and violent offenders that are based on the nature and severity of the crime, the offender's characteristics and criminal history, and any mitigating or aggravating factors. However, in general, judges object to the abolition of their discretion as the neutral arbiter of justice under mandatory minimum sentencing laws, and the shifting of that discretion to the prosecutors through their authority to charge a defendant with a crime and to negotiate a plea and/or a sentence. (As will be discussed in Section 2, a judge must approve a negotiated sentence that is part of a plea bargain.)

Scope of Study

Public Act 04-234 directed the Legislative Program Review and Investigations Committee to study mandatory minimum sentencing laws. The committee adopted a scope of study on April 11, 2005. As required by the public act, the study is focusing on:

[1] Cocaine in a freebase form is commonly referred to as "crack."

- determining any impact of the state's mandatory minimum sentencing laws on the demand for prison beds;
- evaluating the actual versus intended impact of the mandatory minimum sentencing laws on the overall criminal sentencing policy of the state; and
- estimating the costs of mandatory minimum sentences and any proposed sentencing changes.

Methodology

To date, a variety of sources and methods have been used to gather information and data for this study. Relevant statutes, case law, court rules, and Judicial Branch administrative policies were reviewed. Public policy and academic research on mandatory minimum sentencing, other criminal sentencing models and reforms, and plea bargaining were examined. Various research reports on the use and impact of mandatory minimum sentencing laws on a national and state levels were also reviewed.

Committee staff conducted interviews with key personnel from the Judicial Branch, Division of Criminal Justice and various state's attorney's offices, and the Office of the Chief Public Defender and public defenders assigned to the state's judicial districts. National experts on criminal sentencing and mandatory minimum penalties were also consulted.

The program review staff observed the pre-trial conference process, during which cases are negotiated with judicial oversight, in a sample of courts throughout the state. Judges, state's attorneys, and public defenders and private defense attorneys were interviewed. Program review staff specifically focused on how the mandatory minimum sentencing laws impact plea bargaining and a defendant's decision to proceed to trial.

From June through August 2005, program review staff observed pre-trial proceedings in five Judicial District (JD) courts [Hartford, New Britain, New Haven, New London, and Waterbury] and eight Geographical Area (GA) courts [Bridgeport (GA 2), Hartford (GA 14), Manchester (GA 12), New Britain (GA 15), New Haven (GA 23), Norwich (GA 21), Rockville (GA 19), and Waterbury (GA 4).][2] This phase of the study was organized through the administrative judge for the Superior Court for adult criminal matters and with the consent of the judges, state's attorneys and public defenders for each JD and GA court.

The program review staff has begun preliminary analysis of all criminal cases (dockets) for which the defendant was arrested and/or convicted of an offense subject to a mandatory minimum penalty between January 1, 2000 and June 30, 2005. The complete analysis will be presented in the staff's findings and recommendations report due in December 2005.

[2] The Superior Court for adult criminal matters is divided into 13 Judicial District and 20 Geographical Area courts. JD courts, commonly referred to as Part A, adjudicate and dispose of the most serious and complex criminal cases, typically class A felonies. GA courts, or Part B, handle all other criminal and motor vehicle cases. Each JD and GA court is presided over by a Superior Court judge.

Report organization

This report is divided into five sections. Section 1 outlines Connecticut's mandatory minimum sentencing laws. Section 2 describes the plea bargaining and criminal case disposition and sentencing processes, and Section 3 outlines the major sentencing reforms in the state including mandatory minimum sentencing. Section 4 provides a preliminary analysis of crime data and criminal cases subject to mandatory minimum sentences. Finally, Section 5 outlines the program review staff's preliminary findings.

Section 1

Mandatory Minimum Sentences

A comprehensive framework of state laws guides the criminal justice process in Connecticut. The laws defining conduct that is criminal and designating the range of penalties for the crimes are generally found in the state's statutory penal code (C.G.S. §53a *et seq*.). There are also a series of state laws specifying the functions of each of the actors (e.g., judge, prosecutor, defense counsel) in the criminal justice system, the criminal case disposition and sentencing procedures, and the rights of criminal defendants. Since the focus of this study is mandatory minimum sentences, the emphasis is on the state's sentencing laws and procedures.

Criminal sentencing is complex. The penal code authorizes several types of sentencing options that a judge may impose upon a convicted offender including prison, probation, conditional discharge, special parole, diversionary or alternative sanction, or a fine. Certain categories of offenders (e.g., youth, mentally ill, drug-dependent) are eligible in some instances to be diverted from the criminal justice system into the state-administered mental health or substance abuse treatment system, thereby avoiding a criminal record and punishment. A single sentencing option or a combination of options may be imposed, and a sentence may be subject to certain penalty enhancements, restrictions, exemptions, and offender eligibility criteria. A person may be convicted of more than one crime and, therefore, receive multiple sentences, which may consist of various penalty options. Multiple sentences can run concurrently (at the same time) or consecutively (one after another). State law establishes time served requirements for court-imposed sentences, but also authorizes early release programs such as parole. An offender is often under the jurisdiction of more than one criminal justice agency (e.g., Department of Correction (DOC), Board of Pardons and Paroles, Court Support Services Division) throughout the duration of a single sentence.

Mandatory minimum penalty laws are only part of the fabric of the state's criminal sentencing policy. It is, therefore, necessary to understand criminal sentencing policies and procedures in Connecticut to have a context for reviewing the mandatory minimum and enhanced penalty laws. A brief overview of the sentencing guidelines set forth in the penal code is presented below, and a detailed summary is provided in Appendix A.

Overview of Penal Code Senences

The penal code authorizes several sentences that a judge may impose upon a person convicted of a criminal offense including:

- imprisonment in a state correctional facility;
- probation supervision;
- conditional or unconditional discharge;
- special parole;
- diversionary or alternative sanction;

- fine;
- financial restitution; and
- community service.

The primary sentencing model in Connecticut is determinate sentencing. For any felony or misdemeanor offense committed on or after July 1, 1981, the penal code calls for a fixed (or definite) prison term rather than a sentence framed by a minimum and maximum term. In theory, a judge has unilateral discretion in the type and length of any determinate sentence imposed. However, in practice, a judge is constrained by statutory sentencing ranges based on the offense type, class, and degree as well as other sentencing requirements and enhancements. For example, the sentencing range for a class B felony is no less than one year but no more than 20 years in prison and/or not more than five years on probation. In selecting, calculating, and imposing the specific type and length of a sentence, a judge may consider the circumstances of the crime, the defendant's criminal history, aggravating and mitigating factors set forth in pre-sentencing reports and other documents, and the attitude of the victim (or victim's family), but the fixed prison term or period of community supervision (e.g., probation) cannot be less than the minimum or more than the maximum term specified by the penal code. As stated above, a sentence can be composed of various penalty options.

The sentencing laws provide for penalties based on the offense type, classification, and degree. The elements are described below.

Offense type. The basic types of offenses are felonies (punishable by more than a year in prison) and misdemeanors (punishable by no more than a year in prison.) There are also violations and infractions, which are the least serious offenses typically punishable by a fine.

Offense class. The offense class is a statutory ranking system denoting the severity of the crime based on specific or special circumstances of the offense. The most common circumstances include: the victim's age or physical or mental status; the offender's age or physical or mental status; total value of property damaged or stolen; type and amount of illegal drug manufactured, sold, or possessed; location of the offense; whether a weapon was used and the type of weapon; and severity of the injury to the victim. All felony offenses are classified as class A, B, C, and D and misdemeanor offenses as class A, B, and C with class A being the most serious. The penal code defines two other offense classes: capital and unclassified. A capital offense is punishable by a death sentence or life in prison without the possibility of release. Unclassified felony and misdemeanor crimes are not specifically classified as class A, B, C, or D; the penalties are identified within the statutory offense definition.

Offense degree. The degree of offense is the third way in which the crime severity, circumstances, and criminal responsibility of the defendant are defined for use in charging a defendant with a crime and, upon conviction, imposing a penalty. Crimes are ranked based on the specific circumstances of the crime as first, second, third, fourth, fifth, or sixth degree with first degree being the most serious.

The primary difference between offense class and degree is that offense degree is used to charge a defendant whereas the classification is used to determine the appropriate penalty based on the statutory sentencing options and ranges. Both are used during the plea bargaining process, which is discussed in the next section of this report, to negotiate a guilty plea and sentence recommendation.

Incarceration sentencing ranges. Table A-1 in Appendix A provides a list of the sentencing guidelines for periods of incarceration for felony and misdemeanor offenses under the determinate sentencing framework. With some specific exemptions, the minimum and maximum sentencing guidelines for felonies and misdemeanors are:

- **capital felony**: execution or life without possible of release;
- **class A felony**: prison term of not less than 10 years nor more than 25 years;
- **class B felony**: prison term of not less than 1 year nor more than 20 years;
- **class C felony**: prison term of not less than 1 year nor more than 10 years;
- **class D felony**: prison term of not less than 1 year nor more than 5 years;
- **class A misdemeanor**: prison term not to exceed 1 year;
- **class B misdemeanor**: prison term not to exceed 6 months; and
- **class C misdemeanor**: prison term not to exceed 3 months.

Mandatory Minimum Sentences

Connecticut has adopted two versions of mandatory minimum sentences: "traditional" mandatory minimum sentences and presumptive sentences. The difference is that a judge may exercise his or her discretion to depart from a mandatory minimum prison term under presumptive sentencing (with an on-the-record articulation of why), whereas under a "traditional" mandatory minimum sentence there is no opportunity for discretion. In addition, there are enhanced penalty options for the general sentencing guidelines and mandatory minimum sentences. These sentencing schemes are discussed below.

In general, Connecticut's mandatory minimum sentencing laws require a judge to impose, at a minimum, a statutorily set prison term that cannot be suspended in part or in total for certain criminal offenses. However, depending on the charges for which the defendant is convicted, a judge has discretion to impose a sentence ***greater*** than the mandatory minimum sentence. A judge may also impose a post-incarceration supervision sanction such as a period of special parole or probation.

Table I-1 lists the specific criminal offenses covered by the law. Currently, crimes subject to a mandatory minimum penalty include murder, kidnapping, various types of assault and sexual assault, burglary, weapon use or possession, and driving under the influence of alcohol or drugs (DUI).

Table I-1. Offenses with Mandatory Minimum Sentences		
CGS	***Offense***	***Mandatory Minimum***
Class A Felony		
53a-54a	Murder (other than a capital or felony)	25 years
53a-54c	Felony murder	25 years
53a-70(a)(1)* 53a-70(a)(2)*	Forcible sexual assault in the first degree of victim under 16 Sexual assault in the first degree of victim under 13 if offender is more than 2 years older	5 years and the prison term plus a period of special parole must equal at least 10 years 10 years and the prison term plus a period of special parole^ must equal at least 10 years
53a-70a*	Aggravated sexual assault Aggravated sexual assault of victim under 16 (as per 53a-70(a)(1))	5 years and at least 5 years special parole 20 years if deadly weapon used in crime and at least 5 years special parole
53a-92	Kidnapping in the first degree	1 year pursuant to *State v. Jenkins* (1986)
53a-92a*	Kidnapping in the first degree with firearm	1 year
53a-28 53a-29	All other class A felonies other than those listed above and except arson in the first degree • Assault in the first degree of a pregnant woman resulting in termination of pregnancy (53a-59c)** • Employing a minor in an obscene performance (53a-196a)	10 years
Class B Felony		
53a-55a*	Manslaughter in the first degree with firearm	5 years
53a-59*	Assault in the first degree	5 years if deadly weapon or dangerous instrument used 10 years if victim under age 10 or is a witness
53a-59a	Assault in the first degree on elderly, blind, disabled, pregnant, or mentally retarded person**	5 years
53a-70*	Sexual assault in the first degree	2 years 10 years if victim under age 10 Prison term and period of special parole must equal 10 years
53a-70a*	Aggravated sexual assault in the first degree	5 years and at least 5 years special parole
53a-71	Sexual assault in the second degree of victim under age 16	9 months
53a-72b*	Sexual assault in the third degree with firearm of victim under age 16	2 years and a period of special parole which together total 10 years
53a-94*	Kidnapping in the second degree	1 year pursuant to *State v. Jenkins* (1986), but

Table I-1. Offenses with Mandatory Minimum Sentences		
CGS	***Offense***	***Mandatory Minimum***
		penal code requires 3 years
53a-94a*	Kidnapping in the second degree with firearm	1 year pursuant to *State v. Jenkins* (1986), but penal code requires 3 years
53a-101	Burglary in the first degree armed with deadly weapon, explosive, or dangerous instrument	5 years
53a-134*	Robbery in the first degree armed with deadly weapon	5 years
53a-301	Computer crime in furtherance of terrorism directed toward public safety agency	5 years
Class C Felony		
53a-56a*	Manslaughter in the second degree with firearm	1 year
53a-71	Sexual assault in the second degree	9 months
53a-72b*	Sexual assault in the third degree with firearm	2 years and a period of special parole which together total 10 years
53a-102a	Burglary in the second degree with firearm	1 year
53a-123	Larceny in the second degree if property "taken" from elderly, blind, disabled, pregnant, or mentally retarded person**	2 years pursuant to CGS §53a-60b
53a-165aa	Hindering prosecution in the first degree	5 years
53a-303	Contamination of public water or food for terrorism	5 years
53-202b	Sale, transfer, distribution, or transport of assault weapon	2 years 6 years if sale to minor under 18
Class D Felony		
14-223(b)	Subsequent conviction for increasing speed in attempt to allude police officer after being signaled to stop if both convictions involve death or serious physical injury	1 year
29-34	Illegal sale or transfer of handgun to minor under 21	1 year
53a-60a	Assault in the second degree with firearm	1 year
53a-60b	Assault or larceny in the second degree of elderly, blind, disabled, pregnant, or mentally retarded person**	2 years
53a-60c	Assault in the second degree with firearm of elderly, blind, disabled, pregnant, or mentally retarded person**	3 years
53a-103a	Burglary in the third degree with firearm	1 year
53a-216	Criminal use of firearm or electronic defense weapon during commission of felony	5 years
53a-217	Criminal possession of firearm or electronic defense weapon	2 years

Table I-1. Offenses with Mandatory Minimum Sentences		
CGS	***Offense***	***Mandatory Minimum***
53-202c	Possession of an assault weapon	1 year
Class A Misdemeanor		
53a-61	Assault in the third degree with deadly weapon	1 year
53a-61a	Assault in the third degree of elderly, blind, disabled, pregnant, or mentally retarded person**	1 year
Unclassified Offenses		
14-227a(g)	Operating a motor vehicle under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions within 10 years	 120 days 1 year
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions within 10 years	 120 days 1 year
21a-278a(a) 21a-278a(c)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent to minor under 18 who is at least 2 years younger than defendant Hiring, using, persuading, coercing a minor under 18 to sell drugs	2 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278

*Crimes also subject to persistent dangerous felony offender provision.
**In any prosecution for an offense based on the victim being pregnant or mentally retarded, it is an affirmative defense that the defendant at the time the crime was committed did not know the victim was pregnant or mentally retarded.
^Special parole is a period of post-incarceration parole supervision imposed by a judge. Special parole differs from traditional discretionary parole in two ways: (1) discretionary parole is granted by the Board of Pardons and Paroles and is not within the jurisdiction of the sentencing judge; and (2) discretionary parole is an early release of an inmate from a court-imposed prison term whereas special parole is a period of parole supervision in addition to a prison term. An inmate can be released on discretionary parole under his or her prison term and then transition into a period of special parole after completing that prison term. The Department of Correction is responsible for supervising parolees released on discretionary parole and special parole.
NOTE: Offenders convicted after October 1, 1998 of a nonviolent or violent sexual assault offense or sexual assault offense against a minor must register as a sex offender with the Department of Public Safety (Megan's Law) and, beginning in 1994, submit a blood sample for analysis and inclusion in the department's DNA data bank.
Source: Connecticut General Statutes

The mandatory minimum sentences for selling drugs to a minor (C.G.S. §21a-278a(a)), using a minor to sell drugs (C.G.S. §21a-278a(c)), and criminal use during a crime or possession of a firearm or electronic defense weapon (C.G.S. §53a-216 and §53a-217) function like a sentence enhancement in that the mandatory minimum penalty is in addition to the sentence imposed for the underlying felony crime. The mandatory minimum sentence is served

consecutively after the sentence for the underlying crime. Thus, a person convicted for the first time of selling drugs (C.G.S. §21a-277(a)) to a minor under 18, is subject to a sentence of up to 15 years for the underlying drug sale crime plus two additional years under the mandatory minimum penalty enhancement. The offender is also subject to a fine of up to $50,000. (The state's drug laws are detailed in Appendix B.)

Another mandatory minimum penalty enhancement is the addition of an extended period of special parole. Special parole is a mandatory period of parole supervision imposed by a judge at sentencing rather than a period of parole granted at the discretion of the Board of Pardons and Paroles (BPP). Special parole enhancements are a required part of the mandatory minimum sentence for all sexual assault offenses except sexual assault in the second degree.

Case law. In the late 1980s, the Connecticut Supreme Court decided three different cases that directly impacted certain mandatory minimum statutes. No subsequent legislative action has been taken in response to these cases.

The penal code identifies the sentence for arson murder (C.G.S. §53a-54d) as life imprisonment without the possibility of release. Arson murder is an unclassified felony. The Connecticut penal code prohibits the suspension of any part of a sentence for class A felonies, but does not prohibit the suspension of a sentence for an unclassified felony. In 1985, the Connecticut Supreme court held a judge may suspend any portion of the life sentence for arson murder because it is an unclassified felony rather than a class A felony.[3]

In 1986, the Connecticut Supreme Court ruled that the mandatory minimum penalties set for kidnapping in the first degree (C.G.S. §53a-92) and kidnapping in the first degree with a firearm (C.G.S. §53a-92a) -- both class A felonies -- did not apply because they established higher penalties than those provided for more serious crimes. Specifically, the Supreme Court held that the sentence scheme set in the statutes violated the equal protection clause to the United States Constitution because it established higher penalties for less serious crimes.[4] Therefore, these two class A felonies are subject to a one-year mandatory minimum sentence rather than a 10-year sentence.

Since the Supreme Court found the mandatory minimum life sentence for arson murder could be suspended, it reasoned so too could the sentence for arson in the first degree (C.G.S. §53a-111).[5] Accordingly, all or part of the 10-year mandatory minimum sentence for arson in the first degree may be suspended and is, therefore, not a mandatory minimum sentence.

Presumptive Sentences

A presumptive sentence means that upon conviction for a certain offense a specific mandatory minimum penalty is the "presumptive" sentence to be imposed unless a judge finds some extraordinary circumstances exist to impose a ***more lenient*** sentence. Generally, the penal code defines the mitigating circumstances (or "good cause") under which a judge may depart

[3] *State v. Dupree*, 196 Conn 655 (1985)
[4] *State v. Jenkins*, 198 Conn. 671 (1986)
[5] *State v. O'Neil*, 200 Conn .268 (1986)

from the presumptive mandatory minimum penalty, and the burden of proof is on the defendant to show good cause for sentencing departure. Table I-2 lists the offenses subject to presumptive sentencing laws including DUI, sale of illegal drugs, and carrying a handgun without a permit.

When imposing a sentence other than the presumptive mandatory minimum sentence, a judge must state, at the time of sentencing and for the court record, his or her justification for departing from the presumptive minimum penalty and imposing the alternative sentence.

Table I-2. Offenses with Presumptive Sentences

Unclassified Offenses		
CGS	***Offense***	***Presumptive Sentence***
14-215(c)	Driving during license suspension for DWI and DWI related offenses: First conviction	30 days unless mitigating circumstances as determined by a judge
14-227a(g)*	Operating a motor vehicle under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service
21a-267(c)	Use, possession, or delivery of drug paraphernalia by non-student near school	1 year in addition & consecutive to sentence imposed for underlying violation of subsection (a) possession or (b) delivery except upon showing of good cause & crime was nonviolent as determined by judge
21a-278(a) 21a-278(b)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: • 1 oz or more of heroin, methadone, • ½ oz or more of cocaine or cocaine in free-base form ("crack")** • 5 milligrams or more of substance containing lysergic acid diethylamide (LSD) Illegal manufacture or sale of the following drugs by non-drug-dependent person: • any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine • 1 kilogram or more of cannabis-type substance	5 years to a maximum of life except if at time of crime: (1) defendant was under 18; (2) defendant's mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge 5 years for first offense or 10 years for subsequent offenses except if at time of crime: (1) defendant was under 18; (2) defendant's mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278a(b)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent person in, at, or within 1,500 feet of school, public housing, or day care center	3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 except upon showing of good cause & crime was nonviolent as determined by judge
21a-279(d)	Possession of any quantity of the following	2 years in addition to & consecutive to sentence

Table I-2. Offenses with Presumptive Sentences		
Unclassified Offenses		
CGS	***Offense***	***Presumptive Sentence***
	drugs in, at, or within 1,500 feet of licensed day care center or school by non-student: • subsec. (a): any narcotic • subsec. (b): hallucinogenic other than marijuana or 4 ounces or more of cannabis-type substance • subsec. (c): less than 4 ounces of cannabis-type substance or any controlled substance other than a narcotic or hallucinogenic other than marijuana	for underlying offense of 21a-279(a), (b), or (c) except upon showing of good cause & crime was nonviolent as determined by judge
29-37(b)	Carrying handgun without permit (29-35a)	1 year unless mitigating circumstances as determined by a judge
*Crime also subject to persistent dangerous felony offender provision. **P.A. 05-248 equalized the amounts for cocaine and "crack" cocaine. Prior to the change, the law set the amounts as at least 1 ounce for cocaine and at least ½ gram for "crack" cocaine. Source: Connecticut General Statutes		

Enhanced Penalties

A penalty enhancement authorizes a judge to ***increase*** the authorized prison term for an offense based on specific aggravating factors. The penal code establishes the additional period of incarceration (the enhancement) that may be added to the sentence for the underlying felony for which a person is convicted. As shown in Table I-3, enhanced penalties are authorized for persons committing a crime while released on bail for a prior offense and persons convicted of carjacking, terrorism, or committing a class A, B, or C felony with a firearm or assault rifle.

Persistent offender. Connecticut sentencing law also authorizes enhanced penalties for a person convicted as a persistent offender, which is defined as a serious, habitual offender. Under Connecticut's penal code there are nine categories of persistent offenders based on the types of serious crimes. (Appendix C provides a detailed listing of the persistent offender categories and the statutory criteria under which a penalty enhancement is authorized.) The nine persistent offender categories are:

- dangerous felony offender;
- dangerous sexual offender;
- serious felony offender;
- serious sexual offender;
- larceny offender;
- felony offender;
- offender of crimes involving bigotry or bias;

- offender of crimes involving assault, stalking, trespass, threatening, or criminal violation of a protective order or restraining order; and
- DUI felony offender.

There are two criteria to be met to be sentenced as a persistent offender under any category: (1) a defendant must have previously been convicted of a specific offense and incarcerated for more than a year (or in some categories sentenced to death) in a Connecticut, other state, or federal correctional institution; and (2) the defendant's history and character and the nature and circumstances of the crime indicate an extended period of incarceration and lifetime supervision best serves the "public interest."

Table I-3. Penalty Enhancements

CGS	*Offense*	*Penalty Enhancement*
53a-40b	Crime (except a violation of a condition of bail release) committed while on bail for a prior offense	In addition to the sentence for the underlying offense, not more than 10 years for a new felony and not more than 1 year for a new misdemeanor
53a-136a	Robbery by taking an occupied motor vehicle (carjacking)	3 years in addition and consecutive to any term of imprisonment for the felony offense
53-202j	Committing Class A, B, or C felony with assault rifle	8 years in addition and consecutive to any term of imprisonment for the felony offense
53-202k	Committing Class A, B, or C felony with firearm	5 years in addition and consecutive to any term of imprisonment for the felony offense
53a-300	Act of terrorism involving use or threatened physical force or violence intended to intimidate the civilian population or government	Impose the sentence for the next most serious degree of felony for which the defendant is convicted
53a-40 53a-40a 53a-40d	Persistent Offender	Refer to Appendix C for a detailed list of the state's persistent offender categories and enhanced penalties

Source: Connecticut General Statutes

Section 2

Criminal Case Disposition Process

This section outlines the criminal case disposition process. The process from arraignment to trial and sentencing is not altered for cases in which the defendant is charged with a crime subject to a mandatory minimum penalty. It is the same as that for all other criminal cases with the exception of cases in which a sentence of life imprisonment or death is being sought. In those cases, extra procedural safeguards are required. With that said, mandatory minimum sentences do impact the plea bargaining process, which is the primary means of disposing of cases.

Only a very small percentage of criminal cases (less than 5 percent) proceed to trial. Most cases are resolved through plea bargaining. The Superior Court for adult criminal matters relies heavily on plea bargaining rather than trials to efficiently and effectively administer the court's docket (caseload and schedule). It is, therefore, important to understand the concept and process of plea bargaining, especially in evaluating the impact of the state's mandatory minimum sentencing laws.

Plea Bargaining Overview

In Connecticut and nationally, the primary objective of plea bargaining is to ensure the criminal trial system, which is expensive and time consuming, is seldom used. The benefits of a disposition without trial vary and include the efficient management of workloads, a means for prosecutors and judges to guard against appeals, and a means for defendants to avoid the uncertainty of a trial and elude the most severe allowable sentence. The most common criticisms of plea bargaining are that most cases are settled by "deals" and dangerous criminals often beat the system and go free or receive lenient sentences. Defendants who refuse to negotiate and insist on a trial (a constitutional right) receive more severe sentences than those who plead guilty. Finally, some argue plea bargaining in effect discriminates against poor and minority defendants because they receive unduly harsh penalties.

Definition. Plea bargaining is not really a single decision point or action. It can be viewed as a continuing process of testing the evidence of a crime that begins immediately after arrest at arraignment and can lead to a number of different outcomes: a dismissal; a plea to one or more charges; a plea to the top charge (most serious offense) or a lesser charge (less serious offense); or a trial. Plea bargaining is a system of negotiation and a series of decisions, over a period of time, between the prosecutor, the defense counsel, and a judge aimed at reaching a mutually acceptable disposition of the case. It is often difficult to distinguish plea bargaining from the general prosecutorial process.[6]

Plea bargaining is based primarily on the prosecutor's unilateral authority and discretion to charge a defendant with a crime, reduce the arrest charges, dismiss or drop multiple arrest

[6] Walker, Samuel, *Taming the System: The Control of Discretion in Criminal Justice 1950-1990*. Oxford University Press (1993)

charges, make a sentencing recommendation to a judge, or offer some other benefit to the defendant (e.g., witness protection). A judge, however, must agree to the results of the plea bargain before accepting the defendant's plea. The defendant, obviously, must also voluntarily and knowingly agree to the plea bargain.

As stated, plea bargaining involves at least the prosecutor, defense attorney, judge, and a defendant. In recent years, in Connecticut, the victim, the victim's family, or victims' rights advocates have been given a voice as well. In some jurisdictions, police officers have a significant role especially if they work closely with the prosecutors to investigate certain types of crimes and/or focus on certain geographical areas.

Categories of plea bargain. Plea negotiations fall into two general categories: "charge" bargaining and "sentence" bargaining. It is often difficult to differentiate between the types of plea bargains since they are interdependent and have similar outcomes for the system and the defendant.

A *charge bargain* occurs when the state's attorney negotiates for a defendant to plead guilty to a lesser charge. The "top charge," which is often the most serious crime the defendant is alleged to have committed, is reduced, and a lesser charge is substituted. Defendants are often suspected of having committed several crimes as part of the same transaction or over a period of time (e.g., a string of burglaries). The state's attorney has complete discretion as to the number of charges to file. The prosecutor also has discretion to file additional charges with enhanced penalties against defendants who qualify as habitual criminals (e.g., persistent offenders). For example, a person arrested for robbery can be charged with the robbery (the "top charge") and several lesser offenses including larceny from and an assault on the victim and perhaps possession and use of a firearm or dangerous weapon. Under a charge bargain, the robbery defendant can plead guilty to the lesser charge of larceny and the robbery, assault, and weapons charges may be dismissed or not prosecuted (*nolle prosequi*[7]).

Often times, therefore, the result of plea bargaining is the offense for which a defendant is arrested is different than that for which he or she is subsequently convicted. This is the primarily the result of the state's attorney's discretion to investigate, charge, and negotiate a criminal case and the defense attorney's ability to provide mitigating information and negotiate the best possible outcome on behalf of his or her client.

Most plea bargaining, however, is really *sentence bargaining*. When the evidence is strong and the question of the defendant's guilt is not an issue, the only remaining issue is the sentence. The most straightforward sentence bargain is an agreement about a sentence recommendation by the state's attorney and a commitment from a judge. In some cases, an understanding is reached regarding the appropriate sentence and then a formal charge is selected that will result in that sentence -- in other words, the crime is made to fit the punishment.

The most common way of negating mandatory minimum sentences is through sentencing bargaining. Once the sentence is agreed upon, the parties determine the charge that will result in the sentence. For example, a guilty plea to a risk of injury to a minor charge (not subject to a

[7] *Nolle prosequi* is a formal court motion by the state's attorney stating the case will not be prosecuted any further.

mandatory minimum penalty) precludes the nine-month mandatory minimum sentence for conviction of sexual assault in the second degree. The prosecutor agreeing not to seek an increased sentence under any of the enhanced penalty laws is also a form of sentencing bargaining.

Rules. In Connecticut, the process of plea bargaining is not authorized -- or specifically prohibited -- or governed by state law. The rules of the court, found in the *Connecticut Practice Book*, establish some broad procedures for negotiated case disposition without a trial. For the most part, the day-to-day plea bargaining process has evolved through informal agreements and cooperation between prosecutors, defense attorneys and public defenders, judges and, of course, defendants, who all benefit from negotiated pleas. The process of plea bargaining, therefore, is heavily influenced by the working relationships between individual prosecutors, defense attorneys, and judges, as well as geographical differences.

In general, the rules of the court encourage the prosecutor and defense attorney to attempt to reach a plea bargain. The state's attorney is required to provide the defense attorney with "reasonable opportunity for consultation." The defense counsel must obtain the defendant's consent to negotiate, to agree to a negotiated disposition, or to proceed to trial. The state's attorney, however, cannot directly negotiate with the defendant unless the defense counsel approves or the defendant waives the right to be represented by an attorney.

There are rules regarding the judge's acceptance of a negotiated plea and the ability of a defendant to withdraw a plea under certain circumstances. These rules are discussed below.

Case Disposition

Once a person is arrested, one of the first decisions for a prosecutor is whether to charge the defendant with a crime and prosecute the case or dismiss the charges and release the defendant. State's attorneys have broad discretionary power over which cases to prosecute, what charges to bring, what sentences to recommend, and the extent to which plea bargaining is used. State's attorneys have the unilateral power to "deal" (negotiate a plea and sentence) to dispose of a case.

Once the state's attorney charges a defendant with a crime, his or her guilt or innocence is determined either through a trial or disposition without trial. The Superior Court judge is the neutral arbiter responsible for managing the case disposition process, overseeing plea negotiations, and presiding at trials and other court proceedings in accordance with the federal and state constitutions, state law, and court rules. The judge also has primary responsibility for sentencing in accordance with the state penal code.

Any person charged with a crime is entitled to be represented by a defense attorney. Defendants may hire a private attorney or, if indigent, be appointed a state public defender at no cost. Defendants may also represent themselves without the assistance of legal counsel.

Figure II-1 shows the basic case disposition process from arrest to sentencing. Plea bargaining can take place throughout case disposition from arraignment to trial, but stops once a judge or jury renders a verdict. The process can vary geographically and between individual

judges and prosecutors, but the following description is based on procedures set forth in state law and the rules of the court as well as the day-to-day administration of those laws by judges and prosecutors to move cases toward disposition through either dismissal, plea bargaining, or trial.

All persons enter the criminal justice system through an arrest for a crime. Most arrested persons are released from custody on bail while awaiting the disposition of the charges against them. Those who are ineligible for bail or financially unable to post bail are detained in local police lock-ups until arraignment and then in state custody pending disposition of their cases or until they post bond.

Arraignment. Arraignment is the first court proceeding for the defendant and is held on the next court date (excluding weekends and holidays) following arrest. Arraignment serves three purposes. First, a judge formally advises the defendant of his or her rights.[8] Second, a judge determines if there is sufficient probable cause to charge the defendant with a crime. Finally, if there is probable cause to charge the defendant with a crime and the defendant has not previously posted bond and been released by the arresting police agency or a bail commissioner, a judge sets bail.

A defendant can plead guilty as part of a negotiated agreement at arraignment. At this early phase in the process, this usually occurs in low-level cases in which the defendant's guilt is not an issue and the sentence does not involve incarceration or a lengthy period of probation. The benefit to the defendant in pleading guilty at arraignment is in disposing of the case and eliminating further court proceedings. Typically, a judge immediately imposes the sentence, which is most often a fine, unconditional discharge, a diversionary program, or restitution.

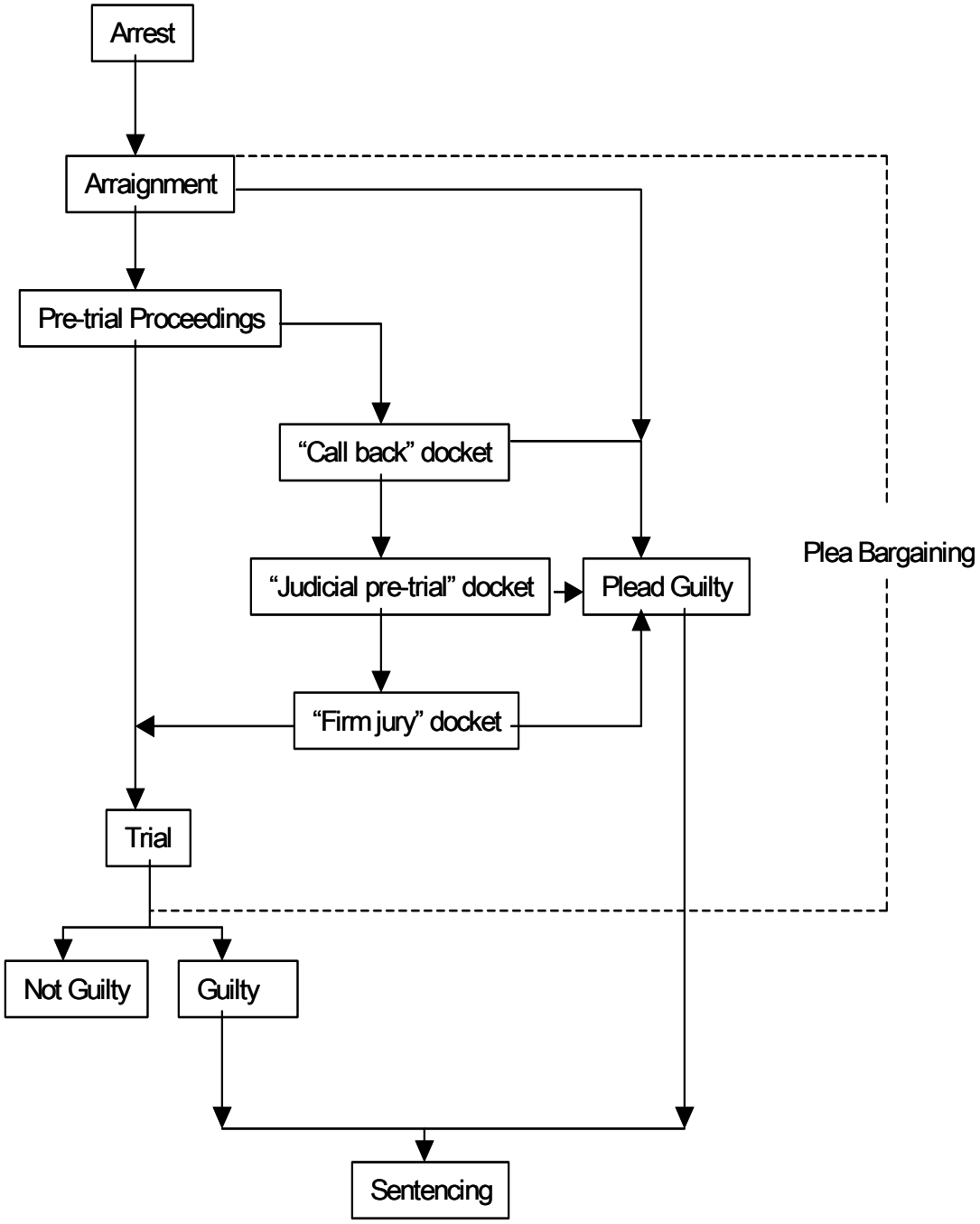
Pre-trial proceedings. After arraignment, if the charges are not dismissed or the defendant has not pled guilty, a case moves through a series of pre-trial proceedings for which the defendant is generally required to appear in court. As shown in Figure II-1, these proceedings are commonly referred to throughout the state's courts as the "call back" docket, the "judicial pre-trial" docket, and the "firm jury" docket. The same judge may not oversee a case as it moves from docket to docket.

The primary purpose of the pre-trial process is to resolve a case through a negotiated plea and sentence as quickly as possible. However, there are reasons for continuing a case during the pre-trial phase including:

- allowing the prosecutor to complete the investigation and determine which charges to file;
- monitoring the defendant's compliance with the conditions of bail release; and
- resolving factual, evidentiary, and procedural issues of the case.

[8] A defendant has the right to: (1) be represented by counsel and if unable to afford counsel advised of the procedures through which the services of an attorney will be provided; (2) refuse to make any statement and to be informed any statement made may be used against him or her; and (3) refuse to be questioned and be informed he or she may consult with an attorney prior to questioning or have an attorney present during questioning.

Figure II-1. Criminal Case Disposition Process



To manage the cases during the pre-trial phase, judges move cases through the different dockets, which are informally used to allow a case to "age."

During the early pre-trial proceedings when a case is on the "call back" docket, a judge typically does not oversee the plea negotiations between a prosecutor and defense attorney. Unresolved cases on the "call back" docket are continued three or four times, over the course of several months, before being assigned to the "judicial pre-trial" docket.

The longer a case remains unresolved the more likely it is the state's attorney and defense counsel will engage in more substantive discussions, overseen by a judge, about the facts of the case, the defendant, and a possible plea agreement. These cases are assigned to the "judicial pre-trial" docket. At scheduled court dates, judges hold pre-trial conferences in their chambers to discuss the cases. The conferences are informal, and the discussions are not part of the court record. Defendants are not present during the conference. Like the "call back" docket, cases can "age" on the "judicial pre-trial" docket for several months as plea offers are made by the prosecutors and counter-offers by defense counsel.

Barriers to negotiation. The pre-trial process can be more difficult in cases where the defendant is charged with an offense subject to a mandatory minimum sentence. These defendants, wanting to elude the most severe sentence, are often reluctant to agree to a plea bargain involving a mandatory minimum penalty. If the prosecutor refuses to substitute another charge not subject to a mandatory minimum penalty, some defendants choose to proceed to trial, which could expose them to an even longer prison term, but could also result in a not guilty verdict.

The process can be made even more difficult in sexual assault cases because of the sex offender registration requirement. Offenders often want to avoid being convicted of a sexual assault offense to evade the state's sex offender registration requirements.[9] A defendant may decline a plea bargain offer and proceed to trial. By going to trial, the defendant risks being found guilty and sentenced to an even harsher sentence than the negotiated sentence, but he or she may be found not guilty of the sexual assault charge and thereby avoid any sentence and the requirement to register as a sex offender.

In some cases, the plea negotiation process is made more difficult because of the administrative driver's license suspension requirement for a DUI conviction. Upon a conviction for DUI, the state Department of Motor Vehicles must suspend the offender's driver's license for a set period of time (e.g., a year). A DUI defendant, wanting to avoid having his or her driver's license suspended, may decline a plea bargain offer and proceed to trial in the hope of being found not guilty and thereby retaining the driver's license.

[9] Connecticut's sex offender registry law – commonly referred to as Megan's Law – requires persons convicted or found not guilty by reason of mental disease or defect of a criminal sexual offense against a victim who is a minor, a nonviolent sexual offense, a violent sexual offense, or a felony committed for sexual purposes to register as a sex offender with the Department of Public Safety (the state police) when they are released into the community and they must continue to register even if they move out of state. With few exceptions, offenders convicted of crimes against minors or nonviolent sexual assault must register for 10 years. An offender must register for life if he or she has been convicted of a violent sexual assault or has been convicted of an offense requiring 10-year registration and he or she has a prior conviction for one of those offenses.

As discussed in Section 1, there is a presumptive penalty for the first DUI conviction and increasingly longer mandatory minimum penalties for the second and third or subsequent DUI convictions. Multiple DUI offenders are dealt with more harshly under the mandatory minimum sentencing laws. This too impacts the plea bargaining process in that offenders are reluctant to accumulate convictions.

Finally, some defendants are incarcerated during the pre-trial phase. Often, this influences a defendant's decision to accept a plea bargain offered by a state's attorney especially if the sentence recommendation takes into account the time the defendant has already served in prison. However, if facing a long prison term regardless of any possible plea bargain, a defendant may not readily accept a deal and proceed to trial.

Pleading. As stated, at any point during the pre-trial phase, a defendant can agree to plead guilty and accept the negotiated sentence. Once a plea agreement is reached, the conditions of the plea agreement must be disclosed to a judge for the court record or, upon a showing of good cause, privately in the judge's chambers (*in camera*) at the time the defendant's plea is offered. Prior to accepting the plea, a judge must "canvas" the defendant during which he or she advises the defendant of his or her rights to: plead not guilty; be tried by a jury or judge; have assistance of counsel; confront the witnesses against him or her; and not be compelled to incriminate himself or herself. A judge must then determine whether the defendant is voluntarily entering his or her plea and fully understands:

- the nature of the charges against him or her;
- the mandatory minimum sentence, if any, that can be imposed;
- the sentence for certain offenses that cannot be suspended;
- the maximum possible sentence on the charge including the maximum sentence based on concurrent sentences from several different charges;
- any possible penalty enhancements authorized by state law based on previous convictions; and
- other consequences of the conviction (e.g., deportation).

A judge cannot accept a defendant's negotiated plea if it is the result of force or threats or promises apart from the plea agreement. Also, a judge cannot accept a negotiated plea of guilty unless there is a factual basis for the plea, which is presented by the prosecution.

However, once a judge finds the defendant knowingly and voluntarily entered a guilty plea and the sentence has been agreed to, he or she may impose the sentence. In some cases, sentencing is postponed, as discussed below.

Withdrawing a plea. A defendant may withdraw his or her plea at any time prior to sentencing based on one of the following grounds:

- plea was accepted without compliance with court rules;

- plea was involuntary or was entered without knowledge of the nature of the charge or sentence that could be imposed;
- sentence exceeds that specified by the accepted plea agreement or judge has continued the case for sentencing based on new information or transfer to another judge;
- plea resulted from the denial of the right to counsel;
- no factual basis for the plea; or
- plea either was not entered by a person authorized to act for a corporate defendant or was not subsequently ratified by a corporate defendant.

After withdrawing the negotiated plea, the defendant pleads not guilty and prosecution proceeds unless the state's attorney declines to prosecute (*nolled*) or a judge dismisses the case[10]. The judge vacating the plea agreement cannot preside over trial or other proceedings on the case unless the defendant waives the judge's removal.

Trial. If a plea agreement is not reached, over a period of time, after several pre-trial conferences and proceedings, the case is then assigned to a judge for trial and placed on the "firm jury" docket. Judicial oversight of the plea negotiation process continues. Plea bargaining can continue up to and throughout a trial, but stops once a judge or jury renders a verdict. At this stage, a judge also begins to hear any pre-trial motions filed by the state or defense associated with the trial, the results of which can impact plea negotiations.

The trial process is regulated by statute and court rules, which are not discussed in this report. A trial is an adversarial proceeding between the prosecutor and defense attorney with a judge as the neutral arbiter, which is a shift from the plea bargaining process that relies on a measure of cooperation between all three parties. The burden of proof is on the state's attorney to show beyond a reasonable doubt that the defendant is guilty. The goal of the defense counsel is to discredit the prosecution's case and to create reasonable doubt about the defendant's alleged guilt. It is the responsibility of the judge or jury to determine guilt.

Case processing standards. Judges follow administrative case processing standards for timely case disposition, as opposed to statutory guidelines. Table II-1 lists the time guidelines for disposing of a case through a negotiated plea or to final disposition with or without trial.

Sentencing. Defendants found guilty after trial are sentenced in accordance with the penal code by the trial judge. As discussed in Section 1, if the offense for which the defendant is found guilty requires a mandatory minimum penalty, the judge must follow that sentence. Beyond that, though, Connecticut's penal code establishes penalty options and ranges for criminal offenses to guide judges. In day-to-day practice, there are generally accepted penalties

[10] The following are grounds for a judge to dismiss a criminal case: (1) defects in the prosecution including grand jury proceedings; (2) defects in the information including failure to charge an offense; (3) statute of limitations; (4) absence of jurisdiction of the court over the defendant or subject matter; (5) insufficient evidence or cause to justify prosecution; (6) previous prosecution barring present prosecution; (7) denial of a speedy trial; (8) law defining the offense is unconstitutional or otherwise invalid; and (9) any other grounds.

for crimes that ensure uniformity, consistency, and fairness in sentencing. Referred to as the "going rate," these sentence options and lengths are also the basis for negotiating a plea bargain. The "going rate" does vary by judicial district.

Table II-1. Criminal Court Case Processing Standards

Offense Type & Class	*Number of Days from Arraignment to Plea*	*Number of Days to Disposition*
Misdemeanors	60	120 (4 months)
Class D & Unclassified Felonies	90	270 (9 months)
Class B & C Felonies	90	365 (12 months)
Class A & Capital Felonies	90	548 (18 months)
Source: Judicial Branch		

Sentence postponement. A sentence can be imposed at the time the defendant pleads guilty in accordance with a plea bargain. A judge can, however, postpone sentencing for several reasons. First, if a case involves a victim, sentencing is postponed pending notification of the victim or the victim's family who have a state constitutional right to make a statement at sentencing. Even under a negotiated plea and sentence, a judge considers the victim's statement in imposing a sentence.

Second, a judge can request a pre-sentence investigation (PSI) report on the defendant by the Court Support Services Division (adult probation). The PSI report provides information on the defendant's personal and criminal history, medical and psychological status, education and employment record, and other information relevant to the sentencing decision. The PSI often includes recommendations and/or referrals to alternative incarceration sentence options such as residential treatment or community-based supervision programs.

Third, sentencing can be postponed for reasons such as allowing the defendant to resolve personal issues especially if he or she is going to be incarcerated or to allow the defendant to locate and reserve placement in a residential program.

Finally, judges often grant defendants the right to argue for a lesser sentence than the negotiated sentence. Defendants are allowed to present mitigating factors that may persuade a judge to depart from the negotiated sentence and impose a lesser penalty. This option is not used when the defendant has pled guilty to or is found guilty of an offense subject to a mandatory minimum penalty unless the law allows for presumption.

Sentence Administration

Important to any discussion of mandatory minimum sentencing is how the sentences are, in fact, administered once imposed by a judge. Like the case disposition process, the administration of a mandatory minimum sentence is no different from any other prison sentence.

Sentence calculation. As stated, criminal sentences can be complex. Since a person may be arrested for and convicted of more than one offense and serve multiple sentences composed of various sentencing options, the calculation of the actual amount of time a person is to be incarcerated or under supervision can be complicated. The penal code, therefore, establishes rules to calculate a sentence.

Defendants who are ineligible for or are unable to post bond are incarcerated until the disposition of the pending criminal charges. If the defendant pleads or is found guilty and sentenced to a prison term, he or she is credited for the time incarcerated in pre-trial status. In some cases, the defendant is sentenced to "time already served," meaning he or she has been incarcerated in pre-trial status for a period that meets or exceeds the sentence imposed by a judge.

Multiple sentences are served concurrently (at the same time) or consecutively (one after another). Under concurrent sentences, the prison terms are merged and the discharge date from prison is calculated based on the longest prison term. Under consecutive sentences, the prison terms are added to calculate an aggregate term and the discharge date is based on the total term -- commonly referred to as the "effective" sentence. In most cases the judge orders the way in which sentences will be served, but for some offenses the penal code specifies multiple sentences are to be served consecutively. A sentence begins when a convicted offender is transferred to Department of Correction custody.

When a prison sentence is vacated (cancelled or rescinded) and a new sentence is imposed on a convicted offender for the same offense or an offense based on the same act, the new sentence is calculated from the date the offender was transferred to DOC custody under the vacated original sentence.

Sentence calculation is only interrupted and stopped if a convicted offender escapes from prison. It resumes when the offender is returned to custody. In many cases, the defendant is subsequently convicted of and sentenced for escape, which is a crime.

Time served. In most cases, the court-imposed sentence is different from the actual time served in prison. Actual time served in prison, which is often less than the court-imposed sentence, is not within the jurisdiction of the state's attorney or the sentencing judge, but instead is driven by statutory parole eligibility and time-served standards and DOC administrative early release policies.

Since 1993, all convicted offenders are required to serve 100 percent of the court-imposed sentence either in prison or under an early release, community-based supervision program (e.g., parole, transitional supervision). All offenders, except those convicted of a capital offense, are eligible for parole. Most are required to serve at least 50 percent of the court-ordered prison term to be eligible for release on parole. Offenders convicted of serious, violent offenses[11] are required to serve at least 85 percent of their sentences to be eligible for parole.

[11] The Board of Pardons and Paroles has identified 33 "serious, violent" offenses under the 85 percent time-served standard.

Since 1999, the Board of Pardons and Paroles may disregard the mandatory minimum penalty portion of a prison sentence in calculating parole eligibility. The parole board calculates eligibility, using the 50 percent or 85 percent time-served standards, on the total "effective" prison sentence.

Since July 2004, the parole board has been required to reassess the suitability of all parole-eligible inmates for parole release at the 75 percent time-served mark of a sentence. For many inmates serving a sentence including a mandatory minimum penalty, the 75 percent mark is at or past the mandatory minimum term of the total prison sentence.

Once released on parole by the parole board, an offender is required to serve the remaining portion of the sentence under community-based parole supervision by the Department of Correction.[12]

DOC has discretionary early release authority for inmates serving two years or less and administers early release programs such as transitional supervision (TS) and halfway house furloughs. In March 2005, the correction department established an administrative policy requiring offenders to serve at least 50 percent of their court-imposed sentence to be eligible for TS or other early release programs. However, as of August 24, 2005, DOC amended its early release eligibility policy. Inmates may now be considered for early release if they are within 18 months of their sentence discharge date (end of sentence date) or voted-to-parole (VTP) date, which is set by the parole board when granting parole.

[12] In 2003, as part of the state budget, the Board of Parole, a separate state agency with consolidated discretionary release and supervision authority, and the Board of Pardons were placed within the Department of Correction. Under an informal agreement, the three agencies continued to operate as they had prior to the merge. In 2004, however, P.A. 04-234 merged the Board of Parole and the Board of Pardons into the new Board of Pardons and Paroles and gave it discretionary release decision-making authority independent of DOC, although the board remains within DOC for administrative purposes only. Meanwhile, the Department of Correction retained parole supervision authority over all released inmates.

Section 3

Sentencing Reforms

The primary object of the state's criminal justice policy generally is to reduce the frequency and severity of crimes thereby providing public safety. The four goals of criminal sentencing are: deterrence, incapacitation, retribution, and rehabilitation. Attempts to improve public safety through criminal justice policy go hand-in-hand with sentencing reform. This section provides an overview of the development of the state's mandatory minimum sentencing policy in the context of the other relevant sentencing and criminal justice policies.

Since the late 1970s, most sentencing reforms in Connecticut have intended to curb the crime rate through sentencing initiatives including mandatory minimum penalty laws. Changes in sentencing policies have also been prompted by a variety of other factors including:

- dissatisfaction with the rehabilitative goals of correction;
- dissatisfaction with the outcomes of both indeterminate and determinate sentencing;
- disparities in sentencing practices;
- a reduction in the actual amount of time served of a prison sentence;
- prison overcrowding; and
- concerns about the levels and types of correctional resources expended to implement sentencing laws.

During the same period Connecticut recognized in some cases the traditional punishment options of incarceration or community supervision (e.g., probation, parole) may not be in the best interest of the ultimate goal of public safety. Diverting a defendant from the criminal justice system to medically supervised treatment for serious mental illness or severe drug addiction or a structured education program focusing on the consequences of certain criminal behavior were deemed to be more appropriate and effective. So while it was adopting "tough on crime" policies, Connecticut also enacted a parallel system intended to divert certain offenders from the criminal justice system and to provide alternatives to incarceration to some "jail bound" offenders. The state's diversionary and alternative sanction policies have taken root as an acceptable criminal justice system response to a criminal conviction.

Finally, an understanding of the history and impact of any sentencing model or reform including mandatory minimum penalty laws must take into account the significant role that plea bargaining plays. As discussed in Section 2, an important factor in sentencing is prosecutorial plea bargaining. Under a plea agreement, the sentence is determined, or at least critically affected, by negotiations between the prosecutor and defense attorney. As a result, prosecutors, defense attorneys, and judges may use plea bargaining to reduce, or at least impact, the number of offenders affected by mandatory minimum penalty laws.

Determinate Sentencing

Since the 1800s, indeterminate sentencing was the criminal sentencing model in use in Connecticut and nationally. Under an indeterminate sentence, a convicted offender received a sentence with a minimum and maximum term set by a judge (refer to Appendix A). Correctional or parole authorities were then responsible for determining when an offender had been sufficiently punished and/or rehabilitated and was, therefore, ready for release. Offenders were generally eligible for parole release after completing the minimum term less any "good time" credits earned while in prison. Since many inmates were paroled at their first eligibility date, the minimum term minus "good time" became the de facto sentence length.

By the late 1970s, the indeterminate sentencing model was under attack. The broad discretion conferred on judges and correction and parole authorities under the sentencing scheme, it was argued, resulted in arbitrary sentences and racial discrimination, and it had failed to control crime. The principal criticism was the absolute discretion of an indeterminate sentencing system. It was impossible to determine a "correct" or "fair" sentence for a type of crime. Simply, judges were criticized for sentencing offenders to overly short prison terms and correction or parole authorities for releasing them too early.

In 1981, based on recommendations by the state Sentencing Commission,[13] Connecticut adopted the determinate sentencing model. The commission reported the goal of the new structure was to provide "just and consistent penalties based upon prior criminal record and the conviction offense." Determinate sentencing laws were intended to result in more uniformity and consistency in sentencing, which could potentially make it easier to predict sentencing outcomes and correctional costs, and to hold judges accountable.

The determinate sentencing model has legislatively established sentencing guidelines. In general, the guidelines are based on two criteria to impose the type and length of punishment: (1) the seriousness of the crime; and (2) the defendant's prior criminal history. Under the determinate sentencing model, a judge imposes a single fixed term of imprisonment (commonly called a "flat" sentence), but retains discretion to consider a wide range of penalties (e.g., probation, mandatory treatment, fines) within the statutorily defined limits in effect for each class of offense.

Other policy reforms. Under the new sentencing model, three significant reforms also took place. First, the role of the parole board, implicit in an indeterminate sentencing system, was abolished under the new sentencing framework. The parole board maintained its

[13] In 1979, the General Assembly established a Sentencing Commission (Special Act 79-96) to recommend sentencing policies and practices to meet the goals of retribution, deterrence, incapacitation, and rehabilitation of convicted offenders. The commission was required to develop sentencing guideline ranges taking into consideration various factors such as: (1) prior sentencing trends for felony offenses; (2) the nature and degree of harm caused by each offense; (3) the importance of prior criminal convictions in imposing a sentence; (4) any policy adopted by the chief state's attorney governing the exercise of prosecutorial discretion; (5) the statewide crime rate; (6) the deterrent effect of a particular sentence; (7) the necessity to avoid prison overcrowding; and (8) public opinion on the gravity of offense. The commission was also charged with measuring the success of sentencing and correctional policies in meeting the state's overall sentencing goals and promoting greater public understanding of the criminal sentencing process.

discretionary release authority for offenders convicted of crimes committed prior to July 1981 and serving indeterminate sentences, but not for determinate sentences. Introduced along with the restructuring of the parole system was an early release program called Supervised Home Release (SHR), which transferred discretionary early release authority to the Department of Correction.[14]

Second, the amount of "good time" credits that could be earned for sentences over five years was reduced, thereby increasing the time served by about 20 percent. Good time credit was reduced from 15 days to 12 days per month of the sentence.

Third, the General Assembly began to establish mandatory minimum sentences for certain offenses, increase existing mandatory minimum penalties, and enact enhanced penalties under the first in a series of persistent offender provisions. The state's mandatory minimum sentencing policy is discussed in greater detail below.

The ***cumulative*** impact of these sentencing reforms was a sizeable increase in the prison population. In the early 1980s, the incarcerated population in Connecticut was already at design capacity levels, and the correctional system could not accommodate the influx of inmates. The state experienced its first prison overcrowding crisis, which it responded to by beginning a long-term prison expansion project that ultimately added over 10,000 new prison beds by the early-1990s (at a cost of over $1 billion).

By 1984, the Sentencing Commission reported to the legislature the new determinate sentencing law had not produced its intended effects and had instead contributed to the growing prison overcrowding problem. According to the commission, the percentage of inmates in prison for serious felonies remained constant, but the number (and percentage) of inmates confined for less serious, non-violent and even misdemeanor offenses had increased significantly. In addition, the average sentence length and time served for less serious felonies had also dramatically increased.

The commission concluded that judges were imposing sentences that were somewhat higher than the previous customary minimums because of their inability to balance the offender's criminal history and correctional needs and impose a minimum term with the victim's and the public's demands for punishment by imposing a maximum term. This increased time served. Overall, sentence lengths increased by about 25 percent. The total impact on the correctional system became clearer when the increased sentence lengths were multiplied by the thousands of offenders sentenced to prison each year.

[14] The SHR program, initially created as a replacement for parole, quickly became a mechanism for dealing with prison overcrowding. By the early 1990s, most inmates were being released after serving about 10 percent of their court-imposed sentence. Recidivism among the inmate population skyrocketed. In 1990, the General Assembly established a three-year phase-out of SHR and transferred discretionary early release authority over determinate sentences from DOC to the parole board, thereby reestablishing parole.

Mandatory Minimum Sentences

Most mandatory minimum penalties were established throughout the 1980s and 1990s; however, Connecticut had enacted mandatory minimum sentences for a few serious, violent offenses as far back as 1969. During the 1980s, the political and social climate was driven by a heightened sense of crime. The mandatory minimum sentencing policy was a symbol of the state's attempt to be tougher on criminals and part of the new determinate sentencing framework.

During this time, the public had lost confidence in the criminal justice system. The media focused on high profile crimes involving violence, drugs, and weapons and crimes against special status victims (e.g., children, elderly, physically disabled, mentally retarded, and pregnant). The "crack epidemic" and the violent, weapon, and gang-related offenses associated with the drug were rampant in urban areas throughout the state. Prisons were seriously overcrowded and convicted offenders were cycling in and out of prison under a mismanaged SHR program; most serving only a few weeks or months before being released.[15] And, despite the determinate sentencing reform, judges were still not publicly trusted to impose appropriately harsh sentences. It was in this climate that mandatory minimum sentences were viewed as a legitimate weapon in controlling crime and drug use.

Since incapacitation was the primary correctional goal and mandatory minimum penalties are premised on an incapacitation rationale, state legislators looked to these laws as a way to reduce crime by ensuring offenders convicted of certain serious -- and often high profile -- offenses served a specific term in prison.

These laws were further intended to counter the drastic reduction in the average time served in prison on court-imposed sentences that occurred under the SHR program. The correction department had quickly used the supervised home release program as a mechanism to control prison overcrowding and, as a result, most inmates were serving only about 10 percent of their court-imposed sentences before being released. Because of the high number of released inmates, the department was unable to adequately provide community-based supervision to the thousands of convicted felons being released early from prison. Mandatory minimum sentencing laws were seen as a solution to the highly publicized failure of SHR.

Finally, the mandatory minimum sentencing laws offered a symbol of action during a time when the public was anxious about crime and was losing confidence in the criminal justice system. They sent a strong message to the public that their fears were noted and were being acted on by elected officials. There is consensus among criminal justice researchers that throughout the country the mandatory minimum sentencing laws enhanced "tough on crime" platforms of elected officials and criminal justice administrators without significantly impacting the outcomes of the criminal justice process.

Drug laws. In Connecticut and nationally, mandatory minimum penalties for drug crimes were first hailed as an effective weapon in the war against drugs and as a means to control

[15] Refer to the Legislative Program Review and Investigation Committee reports on *Board of Parole and Parole Services* (1993) and *Factors Impacting Prison Overcrowding* (2000) and the Prison and Jail Overcrowding Commission (PJOC) annual reports (1989 through 1995).

the other violent, property, and weapon crimes associated with the drug trade. In recent years, however, these laws have been condemned as ineffective in reducing drug use or drug crime and as inherently unfair. They have become the prime example for all that is believed to be wrong with the mandatory minimum sentencing policy. There is consensus in the legislative debate that mandatory minimum sentencing laws were a "stopgap way of dealing with concerns about truth in sentencing."[16]

A brief history of their development in Connecticut is used as an example of the issues surrounding the overall mandatory minimum sentencing policy. (Appendix B contains a summary of Connecticut's drug sale and possession laws including the statutory penalty guidelines and mandatory minimum sentences. It should be noted, however, only drug sale[17] crimes carry mandatory minimum penalties.)

The first mandatory minimum penalty for the sale of illegal drugs (C.G.S. §21a-278) was enacted in the 1970s. The intent of the law, as previously stated, was to curb the use of illegal drugs and to punish more severely persons who were trafficking in the drug trade for profit. These persons were the non-drug-dependent offenders in possession of amounts of drugs deemed to be more than necessary for personal use. Law enforcement officials and prosecutors were supposed to use the law to target the drug "kingpin."

In the mid-1980s, at the height of the nation's long-standing war on drugs, the "crack epidemic" hit. Cocaine in a free-base form, commonly referred to as "crack," was widely introduced throughout the United States. Crack has been called the "equal opportunity" drug because it is cheap (it has a street value significantly less than powdered cocaine), fast acting, extremely addictive, and only a small amount is needed for personal use. For these and other reasons, crack became a popular drug within urban areas and among lower income populations. By the late-1980s, the "crack epidemic" was being cited for a rise in drug-related violent and weapon offenses and organized gang activity, and for fueling a host of drug-related social and medical issues such as babies born addicted to the drug. Representative Michael Lawlor, Judiciary Committee co-chairperson, explained that at this time, "out of frustration, we [the legislature] adopted mandatory minimum [penalties] for certain crimes and persons sentenced to mandatory minimums were not eligible for early release."[18]

Because of the problems resulting from the previously adopted determinate sentencing and correction policies, the "tough on crime" political message, and the continued use of illegal drugs especially "crack," there was a heightened sense of political urgency. In describing the climate at that time, Representative Lawlor stated, "People [in the legislative, judicial, and executive branches] really became transfixed with this crisis that had occurred in our state, in large part owing to the marketing of "crack" cocaine."[19]

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[16] House of Representative debate on SB 1160 An Act Concerning Mandatory Minimum Sentences (May 16, 2001 and May 23, 2001).

[17] Drug sale" is defined as any form of delivery including barter, exchange or gift, or offer therefore. For the purposes of this study, sale also includes manufacture, distribution, dispensing, or administration of an illegal drug.

[18] House of Representative debate on SB 1160 An Act Concerning Mandatory Minimum Sentences (May 23, 2001).

[19] House of Representative debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 10, 2005).

In response, in 1987, the General Assembly held a special legislative session to consider a number of bills to address the "crack war" through criminal justice, sentencing, and drug treatment initiatives. One of the new initiatives (Public Act 87-373) amended the existing law that defines the sale of illegal drugs by a non-drug-dependent person (C.G.S. §21a-278(a)) by adding "crack" to the list of drugs that would subject a person convicted of the offense to a mandatory minimum penalty

Elected officials from urban areas were particularly concerned with continuing to send a strong message to their constituencies that the illegal drug trade and use would not be tolerated; Connecticut was going to be very tough on drug crime especially in its cities.

By the end of the 1980s, Connecticut was well on its way to completing the prison expansion project, and thousands of new prison beds had been added. Since prison overcrowding was no longer (at least publicly) a pressing priority, it was argued serious and violent drug offenders could be incarcerated and required to serve longer periods. The mandatory minimum penalties were, therefore, established for drug sale and other serious, violent crimes such as sexual assault and weapon violations. The severity of the mandatory minimum penalty for a drug sale crime was based on three criteria: (1) type and weight of the drug; (2) offender's drug dependency status; and (3) involvement of children in the offense.

First, the type and weight of the drug is specified in the drug sale laws. Certain illegal drugs have been identified as more dangerous and serious based on characteristics such as their addictive properties. Different weight thresholds are used for charging a person with the sale of various narcotics. For example, prior to 2005, a person had to be charged with and convicted of selling at least one ounce of powder cocaine or at least one half gram of "crack" cocaine (C.G.S. §21a-278(a)) to receive a mandatory minimum sentence. The statutory distinction was based on the fact that "crack" was cheaper than cocaine, fast acting, extremely addictive, and only a small amount was needed for personal use. Therefore, anything more than a very small amount of "crack" was deemed to be sufficient for the purposes of selling, whereas, a person could posses a larger amount of cocaine for personal use. As Represtative Michael Lawlor described, "… for reasons which are not really clear today"[20] the threshold amount for "crack" cocaine was set at at least one half gram versus the threshold amount of at least one ounce for cocaine. (As discussed below, effective July 2005, the amount for both substances is one-half ounce.)

Second, state drug laws recognize persons who are addicted often sell drugs or commit other crimes to get money to buy drugs for their personal use. They are often not in the drug trafficking business. Therefore, at the same time the legislature was enacting mandatory minimum penalties, it also began to establish alternative sentencing options and treatment programs for drug-dependent offenders, who were viewed as less of a criminal threat and more in need of treatment rather than punishment.

Third, the General Assembly intended to send a strong message that it was attempting to protect children from drugs by enacting mandatory minimum penalties for drug crimes involving children. It created mandatory minimum penalty enhancements for:

[20] House of Representative debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 10, 2005).

- selling drugs to a minor under 18 (C.G.S. §21a-278a(a));
- using, hiring, persuading, or otherwise coercing a minor under 18 to sell drugs (C.G.S. §21a-278a(c)); and
- selling drugs within 1,500 feet of a school, day care center, or public housing (C.G.S. §21a-267(c), §21a-278a(b), and §21a-279(d)).[21]

Representative Robert Farr, Judiciary Committee ranking member, stated mandatory minimum sentencing laws were important "… in part [to] send messages … it was important for us as a society to say we wanted to send a message that we were going to be tough on [drug crimes]."[22]

However, over the past 20 years, for various reasons, mandatory minimum sentencing laws for drug crimes have come under attack. Despite the proliferation of mandatory minimum penalties for drug crimes and a drastic increase in the number of persons incarcerated for drug crimes, there has been no demonstrable reduction in drug trafficking or use. The rehabilitative and treatment model has become more widely supported as evidence of its effectiveness mounts. It is also argued mandatory minimum penalties for drug crimes unintentionally resulted in inequities in plea bargaining and sentencing between Caucasian and minority offenders because the statutory threshold disparity between the quantities of cocaine and "crack" required for charging and conviction is unfair and unintentionally targets minority drug offenders. It is further argued mandatory minimum sentences are a significant factor in the state's persistent prison overcrowding problem.

There have been three significant changes to the state's mandatory minimum sentencing laws for drug crimes. The first occurred in 2001, when then-Governor John Rowland introduced a bill to give judges the authority to depart from the mandatory minimum penalty for a drug sale conviction if the crime did not involve violence or a weapon. During the Senate debate on the provision, it was explained,

> the intent of this bill [SB 1160] is to provide a judge in the sentencing phase of a criminal trial with the tools he needs to fashion a sentence which is tailored to the precise circumstances in the case before him. One of the difficulties with mandatory minimum sentences is that a judge is precluded by virtue of the mandatory minimum from creating a sentence which fits the crime, which is one of the hallmarks of the principles of justice of our system. I think what this amendment does is, in keeping with the intent of that underlying bill and the underlying purpose of the bill that's before us, adds to those tools that the judge has, an ability to

[21] Initially, the distance was set at 1,000 feet of a school, but in 1992 it was increased to 1,500 feet. Public housing and day care centers were added (in 1992 and 1994 respectively) to schools as areas where mandatory minimum penalty enhancements were applicable. These areas were intended to be drug-free zones in which children live, play, and are educated.

[22] House of Representative debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 5, 2005).

> fashion a sentence that meets the crime. And for that reason, regardless of one's philosophical view as to whether or not mandatory minimums contribute or don't contribute to a particular outcome, this bill is important and this amendment enhances the importance of the bill by giving the judge back the discretion to fashion a sentence that meets the crime and that's a very important step for the Legislature to take today …"[23]

This law (Public Act 01-99) is important because it shifted the sentencing policy for drug crimes from mandatory minimum sentences to presumptive sentences, except for the sale of drugs to a minor and using a minor to sell drugs. A defendant, however, may only use this provision once. A second drug sale conviction requires imposition of the mandatory minimum penalty.

The second, earlier in 1999 (Public Act 99-196), amended the "Truth-in-Sentencing" parole eligibility standards that had been adopted in 1995. (This sentencing reform is discussed below.) Under the original statutory language, the mandatory minimum penalty overrode the new requirement for serious, violent offenders to serve 85 percent of their sentences to be eligible for parole. As explained during the Senate debate by Senator Donald Williams, Judiciary Committee co-chairperson, the 1999 bill was intended to, "correct something that I believe is unintentional in our statutes. In statute [C.G.S. §54-125a(b)(3)] actually permits a person who has been convicted of an offense for which there is a mandatory minimum sentence to get our earlier than someone who is convicted of a [crime] sentence that did not contain a mandatory minimum sentence."[24]

Now the parole board technically no longer factors the mandatory minimum term of a total aggregate sentence in calculating parole eligibility. This policy change allows the parole board to determine which inmates are released and how long they must serve prior to release without consideration of the mandatory minimum sentence. However, in many cases, offenders convicted of crimes subject to a mandatory minimum sentence actually receive prison terms longer than the mandatory minimum penalty. Parole eligibility on lengthy sentences often results in the inmate serving the mandatory minimum term before release, but this is a function of sentence and parole eligibility calculation not sentencing policy.

Most recently, during the 2005 session, the General Assembly after a lengthy debate passed a bill to equalize the statutory threshold amount of powder cocaine and "crack" cocaine that results in a mandatory minimum penalty. Governor Rell vetoed the bill (Public Act 05-83). In her veto message, the governor stated the bill proposed a dramatic shift in the state's public policy regarding the illegal possession, use, and sale of drugs which is to impose harsh penalties in order to curb the use of crack cocaine and the violence associated with the drug. The governor further found enactment of the bill " would signal a significant departure from this policy" and

[23] Senator William Aniskovich during Senate debate on HB 1160 An Act Concerning Mandatory Minimum Sentences (May 16, 2001).
[24] Senate debate on HB6648 An Act Concerning Parole (June 2, 1999).

send an "inappropriate message that the enforcement of our drug laws, especially with respect to crack cocaine, is being eased." The state legislature and the governor subsequently compromised (Public Act 05-248) and the amount of cocaine and "crack" was equalized at one-half ounce.

During the legislative debate, it was acknowledged equalizing the threshold amounts of powdered cocaine and crack cocaine was a symbolic rather than a substantive change. There are very few persons actually convicted under the drug sale law (C.G.S. §21a-278(a)) because the mandatory minimum sentence is five years to a maximum of life in prison. Under the existing sentencing laws, disposing of any cases that subject a person to a life sentence requires a probable cause hearing. In practice, state's attorneys avoid the probable cause hearing requirement by charging offenders under a subsection of the same law (C.G.S. §21a-278(b)) that carries a five-year mandatory minimum penalty for the first offense and a 10-year mandatory minimum penalty for subsequent offenses. This law does not specify a threshold for powder cocaine or crack cocaine; a person can be charged for sale of "any narcotic substance." Simply, the same disposition and sentence can be achieved without the extra procedural requirements.

During the legislative debate on this issue, Representative Lawlor explained the rationale behind the proposed change in the threshold amounts for cocaine and "crack,"

> … in recent years we have come to learn the painful truth, that number one, this is extremely expensive policy decision to send more and more people to prison. And number two, that we don't actually seem to get any results from sending non-violent drug offenders to prison. Not long ago, … this legislature addressed another unintended consequence of policy decisions we made in the late 1980s and early 1990s, and we made it possible for judges to depart from minimum mandatory sentences for offenders who were charged with either possession or distribution of drugs … because all of us acknowledged that we are all troubled by the racial disparities we see today in our prison system, and they continue. [And] I think it's important to point out what that disparity is. Drug abuse is a serious problem in our state, … we respond to it in a variety of ways. There's no evidence that by sending people to prison for lengthy amounts of time for small amounts of crack that we are making any headway at all in solving that problem. But there's clear evidence that we are aggravating racial disparities in our criminal justice system by establishing public policies like the one we seek to change today." [25]

Other Sentencing Reforms

In the 1990s, the General Assembly enacted a series of sentencing reforms addressing the problems in the criminal justice system (for which mandatory minimum sentencing laws were

[25] House debate on HB 6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 5, 2005).

originally adopted as a stopgap measure.) "Truth in sentencing" was the philosophy behind many of the new reforms. Their overall purpose was to restore credibility to the criminal justice system by reducing the discrepancy between the court-imposed sentence and the actual time served in prison. The reform also responded to the public's perception that harsher sentences reduce crime, especially violent crime. By restricting or eliminating provisions for early release or sentence reduction, "truth in sentencing" reforms required offenders to serve more of their prison terms. These reforms, however, did not necessarily call for longer court-imposed sentences. A brief overview of the reforms follows.

Alternative sanctions. In 1990, the Office of Alternative Sanctions (OAS) was established in the Judicial Branch, to focus the state's efforts at developing alternative punishment options to prison for certain types of offenders. OAS was given the overall responsibility to oversee and coordinate implementation of a network of alternative incarceration sanctions to ease prison overcrowding and court backlog and to more successfully supervise offenders in the community thus providing public safety. Since the late 1980s, Connecticut had been developing a range of court-based sanctions that included any punishment option more restrictive than probation, but less punitive than incarceration. OAS has since been reorganized into the Court Support Services Division (CSSD), which has continued to develop, administer, contract for, and evaluate a statewide network of alternative incarceration programs. Since its inception, the state's alternative sanction policy has broadened to create alternative sentencing options including, but not limited to: in- and out-patient substance abuse and mental health treatment and services; women's and children's programs; specialized population programs (e.g., sex offenders, Latinos); halfway house and transitional housing; and educational and vocational programs.

Discretionary parole. After the supervised home release program was statutorily eliminated and phased out in 1993, discretionary parole authority for determinate sentences greater than two years was reinstated within the Board of Parole. The board was made a separate state agency consolidating discretionary release and parolee supervision authority. DOC retained early release and supervision authority over inmates sentenced to two years or less. It administered the Transitional Supervision (TS) program for those inmates.

Time-served requirements. As part of the restructuring of parole, the legislature enacted time-served standards for parole eligibility. First, a 50 percent time-served standard for early release eligibility was phased in for all sentenced inmates. This meant all inmates had to serve at least half of their sentences to be eligible for release to parole or any DOC community supervision program (e.g., transitional supervision). Initially set at 25 percent in 1995, the standard was increased over the next two years to 40 percent and then 50 percent.

Second, all offenders who committed a crime on or after October 1, 1994, are required to serve the full term of their court-imposed sentences ***either*** in prison or on parole or DOC community supervision. This was a significant change to the sentencing laws and established, for the first time, a 100 percent time-served standard.

"Truth-In-Sentencing." In 1994, the United States Congress enacted the Violent Crime Control and Law Enforcement Act to ensure that time served was commensurate with the

court-imposed sentence and to incarcerate violent juvenile and adult offenders. To ensure compliance, Congress provided funding to states that required serious, violent offenders to serve at least 85 percent of their sentences prior to release. The federal funding was to be used to add prison beds by building new and/or expanding existing prison facilities.

In 1995, Congress established the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) program to provide $10 billion over a four-year period to state and local authorities to defer the costs associated with compliance with the law, including putting more offenders in prison and the associated correctional construction costs. The VOI/TIS program required state legislatures to enact laws requiring violent offenders to serve at least 85 percent, or an average of 85 percent, of their sentences prior to release. The VOI/TIS program did not require legislative action, only assurances by states that violent offenders would serve a substantial portion of their sentences prior to release.

Connecticut adopted the sentencing standards in 1995, thereby establishing a third time-served requirement by mandating serious, violent offenders serve 85 percent of their sentences to be eligible for parole.

"Good time." The new parole and time-served laws were silent with respect to the awarding of "good time" credits, which were not repealed. A 1994 attorney general opinion requested by the Department of Correction, however, interpreted the new law as eliminating the effect of "good time" on reducing a sentence. It stated, although there is no specific record of legislative intent, the legislature intended to eliminate "good time."

In 1999, the Connecticut Supreme Court agreed with the attorney general's opinion.[26] The effect of that ruling is an inmate must serve between 50 and 85 percent of his or her court-imposed sentence to be eligible for any early release program and 100 percent of their sentence incarcerated or under community supervision. By 2000, this was one of the toughest sentencing reform laws adopted in the United States. To date, the legislature has not acted to respond to the court's decision.

Crime initiatives. Also during the mid-1990s, the legislature enacted a series of anti-crime provisions, which increased maximum and mandatory minimum sentences (especially for offenses involving or against children and violent sexual assault offenses), limited offender eligibility for alternative sentence options and programs, expanded persistent offender statutes, and toughened other criminal statutes. In addition, a number of changes were made to restrict eligibility for alternative sentencing programs for sexual assault offenses and offenses involving the "use, attempted use, or threatened use" of physical force.

Enhanced Penalties

The persistent offender laws are based on deterrence and incapacitation theories. It is assumed offenders with a prior felony conviction (or "strike") will be deterred from re-offending because of the harsher punishments mandated for a subsequent similar conviction. For offenders

[26] *Valez v. Commissioner of Correction*, 738 A.2nd 604, 250 Conn. 536 (1999)

convicted of a second or third offense, a lengthy period of incarceration is used to protect the public since these habitual offenders are considered unlikely to be rehabilitated or reformed.

Connecticut enacted its first persistent offender law (Public Act 69-828) in 1969 for persons with prior serious felony convictions. The persistent offender laws classify a prior homicide, sexual assault, robbery, or assault as a "strike" against a habitual offender. During recent years, other prior felony offenses including larceny, crimes involving bigotry or bias, crimes involving assault, stalking, trespass, threatening, harassment, or criminal violation of a protective or restraining order, and driving under the influence of alcohol or drugs have been classified as a "strike" against a persistent offender.

Section 4

Preliminary Data Analysis

This section provides a preliminary analysis of criminal court cases in which a person was arrested for and/or convicted of a crime carrying a mandatory minimum penalty. An overview of the crime rate in Connecticut is also included because one of the intended goals of mandatory minimum sentencing laws is to reduce crime.

Mandatory Minimum Sentences

The following is the preliminary analysis of criminal and motor vehicle cases (dockets) in which a person was arrested for and/or convicted of at least one offense subject to a mandatory minimum penalty. The data were obtained from the Judicial Branch's Division of Court Operations and will be used to track trends and patterns in the disposition and sentencing in cases involving crimes subject to a mandatory minimum sentence.

Sample selection. A sample of 127,922 criminal cases was selected based on the following criteria:

- the case included at least one arrest and/or conviction offense charge subject to a mandatory minimum sentence; and
- the case was disposed of between January 1, 2000 and June 30, 2005.

Since the focus of the study is mandatory minimum sentencing, the disposition date was used as the starting point, rather than the arrest date, for selecting cases to ensure that all cases had a sentence or a not guilty disposition. No pending (or open) cases are included.

As previously stated, often times the offense for which a defendant is arrested is different than that for which he or she is subsequently convicted. Therefore, to capture all mandatory minimum cases, the sample includes any case in which the defendant was arrested for and/or convicted of at least one crime subject to a mandatory minimum sentence.

Data for the selected cases includes:

- defendant demographics (age, race, gender);
- date of arrest;
- arrest charges;
- disposition date;
- disposition charges; and
- sentence.

Data limitations. The case sample is case-based (using docket numbers), not defendant-based. It tracks sentencing trends as they relate to specific crimes rather than the offenders.

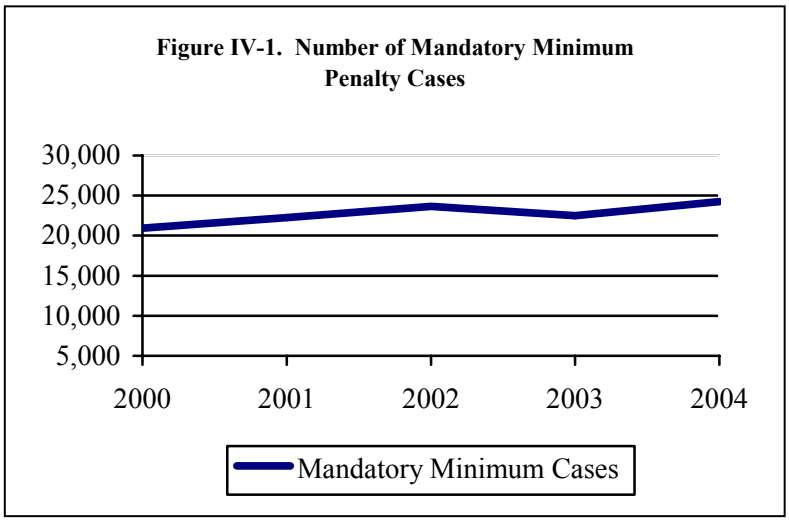
The Judicial Branch's existing automated information system is case-based and does not link individual defendants with case dockets. All cases are assigned a docket number once they are referred to the court after an arrest. The docket number allows the Superior Court to manage the calendar and track criminal case dispositions.

Since a person may be arrested more than once during a specific period, he or she may be associated with several dockets. If convicted, a defendant may receive multiple sentences under different docket numbers or a single sentence from combining separate cases into a single docket number. So while a docket number is unique to a specific case, it is difficult to accurately link all dockets to a specific defendant without another unique offender-based identification number.

The criminal justice system does use the State Police Bureau of Identification (SPBI) number, which is assigned to a person upon the first arrest for which he or she is fingerprinted, and the Department of Correction inmate number, which is assigned upon the first admission to jail or prison to identify specific offenders.[27] However, the Judicial Branch does not routinely record those numbers in its case database.

Mandatory minimum penalty cases. Between January 1, 2000 and June 30, 2005, there were 127,922 cases in which a defendant was arrested for and/or convicted of a crime subject to a mandatory minimum penalty. Figure IV-1 shows the total number of mandatory minimum penalty cases has remained consistent over the past five years, averaging 22,700 cases a year. During the same five-year period, the Superior Court added an average of 129,000 new criminal cases per year to its docket. The mandatory minimum penalty cases represent only 17 percent of new criminal cases added each year.

Figure IV-1. Number of Mandatory Minimum Penalty Cases



Mandatory minimum arrest charges. Table IV-1 lists the number of arrest charges in the sample by crime subject to mandatory minimum penalties including those with presumptive sentencing criteria (e.g., drug sales). As stated, a person may be charged with more than one offense per case. The total number of charges will not equal the

[27] The SPBI number tracks a person during any fingerprint-supported arrest. If the person is not fingerprinted at arrest, which commonly occurs in many misdemeanor and motor vehicle cases, the case is not linked to that person and may not appear on his or her criminal record ("rap sheet"). The DOC inmate number tracks a person through any period of incarceration. Linking a specific person to criminal cases becomes even more difficult when he or she provides incorrect information at arrest (different name or date of birth, a variation of a name) or there are data entry errors.

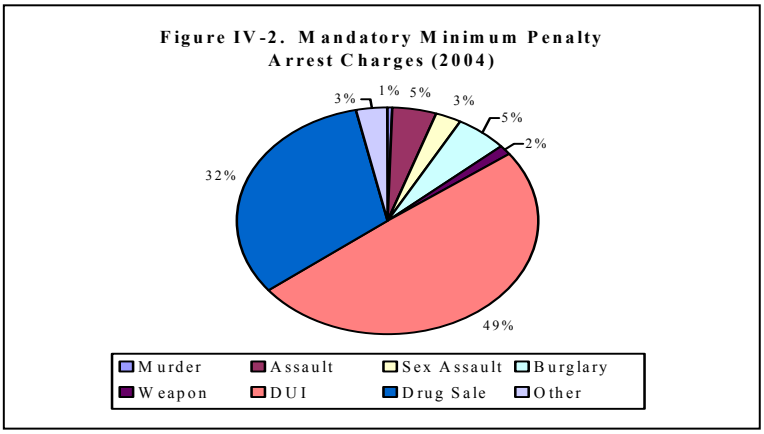
total number of dockets. The sample includes over 166,000 arrest charges, which includes all types of criminal offenses.

The charges are grouped by crime categories. For a description of the specific offenses subject to mandatory minimum penalties refer to Table I-1 (page 7) and Table I-2 (page 11). The database contained no arrest charges for the following mandatory minimum penalty offenses: (1) assault in the first degree of a pregnant woman resulting in termination of the pregnancy; (2) contamination of public water or food supplies for terrorism purposes; (3) the sale, transfer, distribution, or transport of an assault weapon; and (4) possession of an assault weapon.

Table IV-1. Arrest Charges for Mandatory Minimum Penalty Crimes

MM Crime	*2000*	*2001*	*2002*	*2003*	*2004*	*AVG.*
Murder/Manslaughter	252	196	221	194	195	211
Assault	1,162	1,322	1,301	1,419	1,358	1,312
Sexual Assault	795	816	801	803	806	804
Kidnapping	176	144	148	169	173	162
Robbery	350	339	311	357	342	339
Burglary/Larceny	1,379	1,552	1,526	1,522	1,564	1,508
Firearm/Weapon	341	380	449	334	436	388
MV/DUI	12,486	13,135	14,054	13,015	14,244	13,386
Drug Sale	7,366	7,958	8,503	8,348	9,296	8,294
Other Crimes*	0	2	5	4	7	4
TOTAL	24,307	25,844	27,319	26,165	28,421	26,411

*Other crimes include: (1) hindering prosecution; (2) computer crime for terrorism purposes; and (3) using a minor in an obscene performance.
NOTE: Data for 2005 is not included because it only covers the six-month period from January 1 through June 30.
Source of data: Judicial Branch

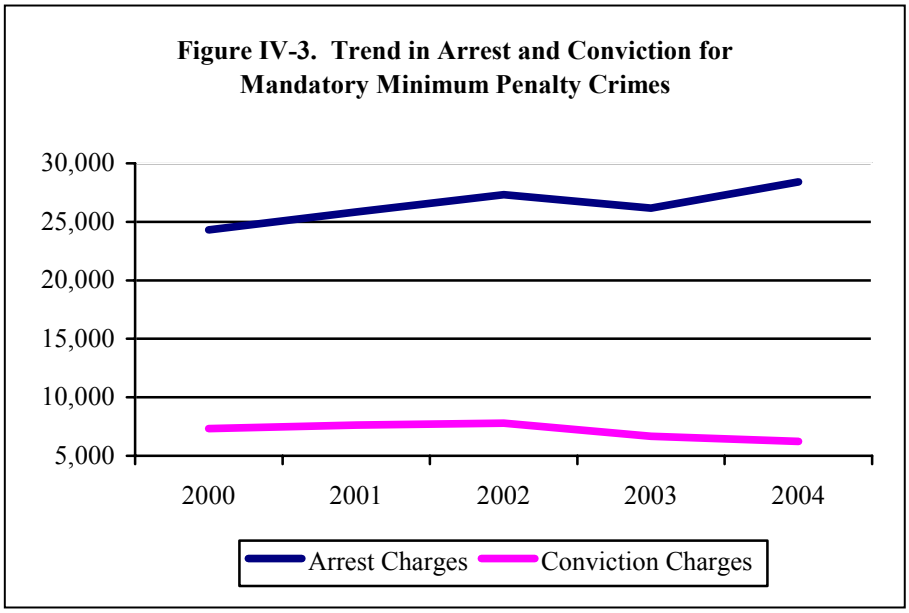


The rate of charges for each crime category remains fairly consistent over the five-year period. As shown in Figure IV-2, in 2004, about half (49 percent) of the mandatory minimum penalty charges were for driving under the influence of alcohol or drugs and related motor vehicle offenses such as driving under a license that was suspended for a prior DUI conviction. When combined with the drug sale charges, these two arrest charge categories account for an overwhelming majority (81 percent) of mandatory

minimum penalty arrest charges. The remaining offenses, which are predominately serious violent crimes, represent less than 20 percent of all arrest charges.

Mandatory minimum conviction charges. As discussed in Section 2, a criminal case can result in one of several dispositions. The most common are: guilty (as part of a plea bargain or after a trial); not guilty; nolle (not prosecuted); or dismissal (charges dropped). Because a defendant may be arrested for and charged with more than one crime, a single case may have several different dispositions. For example, a defendant may plead guilty to one charge and have another charge nolled.

Figure IV-3. Trend in Arrest and Conviction for Mandatory Minimum Penalty Crimes



The following analysis includes only the total number of mandatory minimum penalty conviction charges for which the defendant plead or was found guilty. As shown in Figure IV-3, over the past five years, the trend lines for the number of mandatory minimum penalty charges with a guilty verdict dramatically drops from the total number of mandatory minimum penalty arrest charges. Overall, only 30 percent of mandatory minimum penalty arrest charges result in a conviction for an offense subject to a mandatory minimum penalty. In contrast to this trend, previous research and data analysis by the program review committee has shown more than half the statewide total number of arrests result in guilty convictions.[28]

As the trend line shows, the overall rate of conviction for mandatory minimum penalty offenses dropped during 2003 and 2004. However, the trend in arrest spiked in 2004.

The program review staff will continue to analyze the mandatory minimum arrest, conviction, and sentencing patterns on a case basis. This analysis may better explain the aggregate trends shown in the graphic.

Committee staff is also in the process of collecting additional data on the type and weight of the illegal drug and the location of the drug sale crime in a random sample of dockets involving an arrest for a drug sale crime subject to a mandatory minimum penalty. Finally, Department of Correction data on the actual time served on mandatory minimum penalties is also

[28] Refer to the Legislative Program Review and Investigations Committee report on *Factors Impacting Prison Overcrowding* (December 2000).

being collected. These analyses will be presented in the staff findings and recommendations report in December 2005.

Crime Rate

One underlying principle of mandatory minimum sentencing laws is to reduce crime. Currently, there is no accurate method to draw a correlation between the imposition of mandatory minimum penalties and any change in the state's crime rate. Mandatory minimum sentencing laws are, at best, one of many factors that impact the crime rate.

While there is no single method to accurately measure the overall crime rate in Connecticut, various data sources are used to track aspects of crime, which allow conclusions about the trends to be drawn.

The number of reported crimes and arrests made by the state and local law enforcement agencies are used to calculate the state's crime rate.[29] The crime rate is based on seven index crimes, which were selected to represent the overall volume and rate of crime.[30] The index crimes are categorized as: (1) violent crimes: murder, aggravated sexual assault (rape), robbery, and aggravated assault; and (2) property crimes: burglary, larceny-theft, and motor vehicle theft. (Arson was added as a violent index crime, but is not included in this analysis.)

These data have limitations that should be considered when measuring the crime rate. Reported crime data do not include unreported and undetected crimes; currently, there is no estimate of unreported and undetected crime in the state. Arrest data do not include unsolved crimes; if the offender is not arrested, the case is not counted. An offender may be arrested for more than one crime, but only the most serious charge is reported. Since a person may be arrested more than once during a particular period (e.g., year), the number of arrests does not reflect the number of persons arrested.

Given these data limitations, the crime rate in Connecticut is most likely underestimated. However, the following provides the most accurate analysis of the trends in the crime rate in Connecticut.

Reported crime index. Figure IV-4 shows the crime index rate trend in Connecticut. Since 1980, the overall crime rate has been steadily declining. As shown in the graphic, there was an increase in both violent and property crime during the late 1980s, which is attributed to the introduction of cocaine in a free-base form and the resulting national "crack epidemic." An increase in violent and weapon offenses is often associated with the trafficking of "crack" cocaine. However, beginning in the early 1990s, the overall index crime rate continued to decline and is at its lowest point in 2003.

[29] The Department of Public Safety Division of State Police collect and analyze the data. The division publishes an annual report on crime, *Crime in Connecticut*.

[30] The Federal Bureau of Investigation (FBI) has been tracking nationwide crime counts since 1930, and the Connecticut Division of State Police began submitting crime data in 1977. The FBI defined the seven index crimes. The FBI publishes an annual report on crime in the United States, the *Uniform Crime Report*.

Figure IV-4. UCR Crime Rate Trend in Connecticut

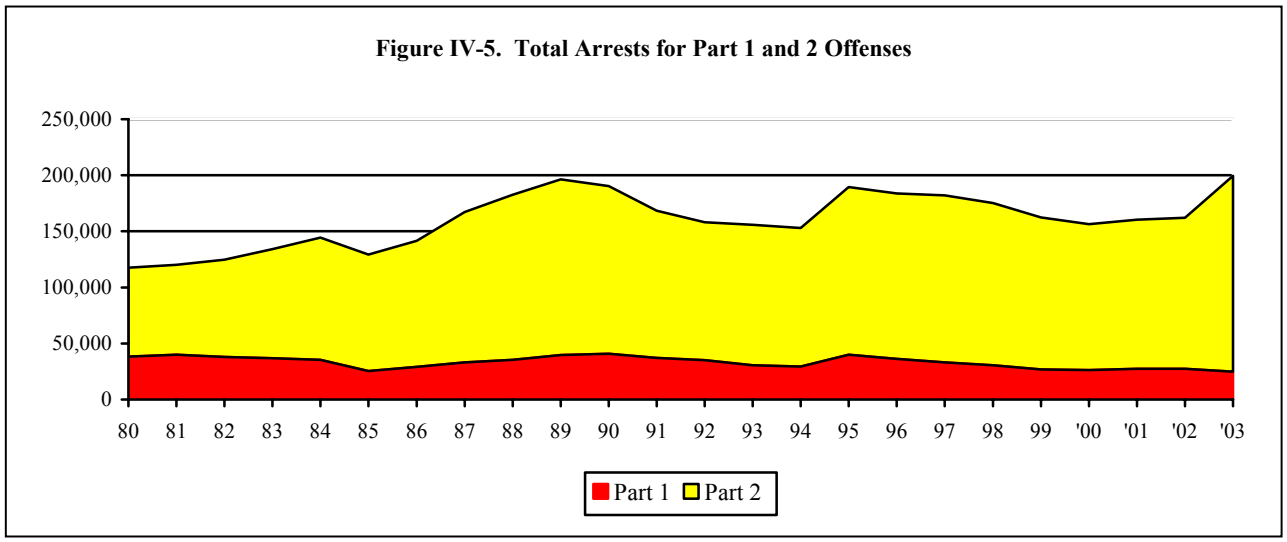
Arrest rate. In addition to tracking the total number of arrests, the state police track the arrests for all crimes in Connecticut. These date provide a broader analysis of all types of crimes based on arrests than the index crime rate.

However, only the most serious offense ("top charge") for which a person is arrested is counted. Crimes are grouped as a Part 1 or Part 2 crime. Part 1 crimes include the violent and property index crimes including arson. Part 2 offenses include all other crimes such as drug sale and possession, firearm and weapon violation, driving while under the influence of alcohol or drugs (DUI), simple assault, domestic violence, and disorderly conduct.

As shown in Figure IV-5, since 1980, the arrest rate in Connecticut does not track the consistent decline in the index crime rate (Figure IV-4). While the overall arrest rate fluctuates, the trend in arrests for Part 1 (index crimes) remains comparatively consistent.

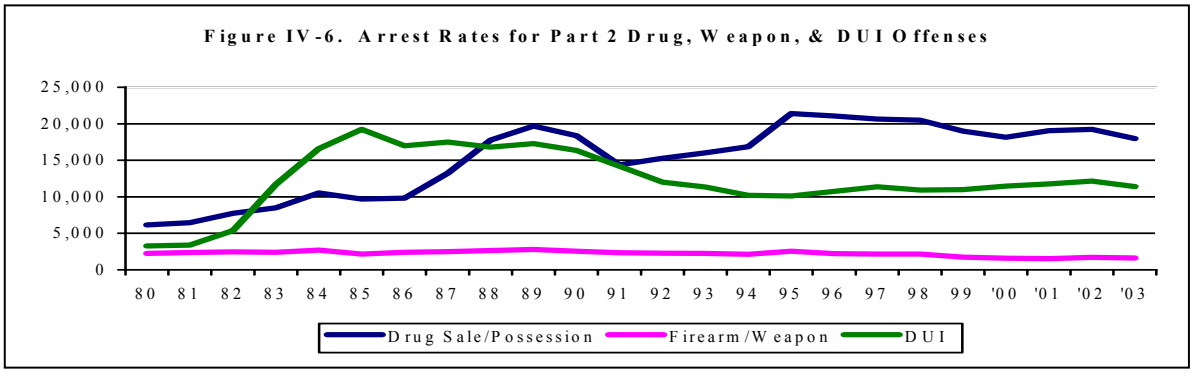
Part 2 offenses show the most variation and that is driven, in part, by shifting priorities in law enforcement practices and the state's criminal justice policy. As noted, Part 2 crimes include the sale and possession of illegal drugs, DUI violations, weapon violations, and domestic violence crimes, all the focus of a great deal of political and public attention and criminal justice enforcement during the past 20 years.

For example, the overall and Part 2 arrest rates reached their highest peaks during the late 1980s, as law enforcement and other criminal justice system resources were focused on the trafficking and use of "crack" cocaine and the violent and weapon offenses associated with the drug. Arrests rates spiked again in the mid-1990s, when Congress provided funding to increase the number of local police officers throughout the country. The federal funds were used by states to hire, train, and deploy thousands of new police officers. More police officers, naturally, result in more arrests.



The following graphic (Figure IV-6) illustrates the trend in arrests for three Part 2 offenses subject to mandatory minimum penalties: drug sale; firearm and weapon violations; and driving while under the influence of alcohol or drugs. As discussed in Section 1, only specific violations within these crime types are subject to mandatory minimum penalties; the possession of illegal drugs does not carry a mandatory minimum penalty nor do most firearm permit violations. The data do not identify the arrests by statute so the total number of arrests subject to mandatory minimum penalties cannot be determined from those that do not. In general, however, these data give an overview of the number of arrests for these specific crimes types.

As shown, the total number of arrests for firearm and weapon violations has remained steady. DUI arrests increased dramatically in the mid-1980s, but then declined and eventually leveled off in the mid-1990s. For the reasons discussed above, there were spikes in the number of drug arrests in the late 1980s and mid-1990s, but overall arrests for the sale and possession of drugs has been steadily increasing since 1980.



Section 5

Preliminary Staff Findings

The program review committee staff preliminary findings and issues regarding the purpose, administration, and the public's perception of the mandatory minimum penalty laws are presented below.

Legislative Purpose of Mandatory Minimum Sentencing Laws

Mandatory minimum sentencing laws were intended to deter offenders and thereby reduce crime (and curb drug use). Criminal justice research and sentencing experts have found and Connecticut criminal justice administrators agree, however, that mandatory minimum sentencing laws achieve few of their stated substantive objectives and do not work. *However, mandatory minimum penalties are an effective and efficient prosecutorial tool to negotiate pleas and sentences and, as a result, very few offenders are actually convicted of offenses subject to mandatory minimum penalties.*

Mandatory minimum sentencing policy is a compelling symbol of the "tough on crime" political message and the "crime of the week" political pressures. The laws were enacted in large part to send strong messages that violent crime and drug use, particularly when children are the victims of these crimes, will not be tolerated in Connecticut. This is a powerful argument, especially since no one can dispute public safety is enhanced by having some criminal penalties.

The dilemma is that the elected officials who enact mandatory sentencing laws support them for symbolic reasons while the public officials who administer mandatory sentencing laws often oppose them for procedural reasons. The severity of mandatory minimum sentencing laws is often cited as the reasons prosecutors and judges are reluctant to impose the penalties. Mandatory minimum sentencing laws are based on the severity of the offense and the offender's criminal history and fail to take into account individual offender characteristics and circumstances.

Mandatory minimum sentencing laws are only one component of the existing criminal sentencing framework. Given the comprehensive list of criminal offenses in the penal code, only a small number of serious and/or violent offenses (e.g., murder, assault, sexual assault, firearm and weapon violations, and driving under the influence of alcohol or drugs) are subject to mandatory minimum penalties.

Acknowledging the state's sentencing policy resulted in "unintended consequences" such as unduly harsh sentences for drug sale crimes and racial disparity in criminal sentencing and had failed to achieve its stated goal of reducing the crime rate and drug use, the General Assembly significantly amended the mandatory minimum sentencing laws. First, in 1999, the state's statutory parole eligibility law was amended. Under current parole board policy, convicted offenders sentenced to a mandatory minimum sentence are no longer required to serve that term to be eligible for parole release. Second, in 2001, judges were given discretion to

depart for certain mitigating factors from the mandatory minimum penalties for drug sale crimes. This change enacted the presumptive sentencing reform.

In recent years, Connecticut has begun to shift its policy to more effective and less costly criminal justice strategies intended to reduce recidivism, maintain the prison population at or under bed capacity, and provide more diversionary and alternative sanctions options to a greater percentage of the offender population.

Administration of Mandatory Minimum Sentencing Laws

Mandatory sentencing laws can only be as mandatory as police, prosecutors, and judges choose to make them. *In Connecticut, state's attorneys and judges (and defense attorneys) generally in effect circumvent the state's mandatory minimum sentencing laws.* These entities generally find mandatory sentencing laws too inflexible and take steps to avoid what they consider unduly harsh and unjust sentences.

State's attorneys use mandatory minimum penalties to influence a defendant's decision to accept a plea bargain. If a defendant agrees to a plea bargain, a state's attorney usually "comes off" of a mandatory minimum sentence by substituting another charge and recommending a lesser sentence, which is then imposed by a judge. If a defendant rejects a plea bargain, however, a state's attorney will "stick" on the criminal charge carrying a mandatory minimum penalty and it is then necessary for the defendant to either proceed to trial or continue to negotiate. In either case, the state's attorney's original offer to "come off" the mandatory minimum penalty is withdrawn and the defendant is now subject to at least the mandatory minimum sentence or even a greater prison term. Typically, defendants try to avoid the unpredictability of a trial and elude the most severe allowable sentence by plea bargaining, which strengthens the prosecutor's power to deal.

Geographical differences and the working relationship between a judge, state's attorney, and defense counsel are the most significant factors in how the mandatory minimum sentencing laws are applied. Based on interviews with judges, prosecutors, and defense attorneys and the staff observation of the pre-trial process, in some judicial districts in Connecticut, the mandatory sentencing laws are almost never used to charge a defendant while in others the state's attorneys routinely charge under the laws especially for certain types of crimes such as drug sale or sexual assault.

There is consensus among the judges, state's attorneys, and defense attorneys interviewed that their individual working relationships impact the use of mandatory minimum sentencing laws. A good working relationship allows them to openly discuss the offense and the defendant and to negotiate an appropriate sentence. A difficult working relationship, however, often makes it difficult to negotiate cases subject to a mandatory minimum penalty especially if the state's attorney "sticks on" the charge and the judge disagrees with the decision and/or sentence. In that case, a judge, with no authority over the state's attorney's decision to charge, also has little influence during the plea bargaining process. This clash of authorities can further strain an already difficult working relationship.

Judges interviewed believe, in theory, a mandatory minimum sentencing policy unjustly removes their discretion and improperly shifts that discretion to the prosecutor. However, in practice, most judges stated they have sufficient authority and discretion to work with prosecutors to circumvent the mandatory minimum penalties when they believe the penalties are inappropriate and/or too harsh.

Judges believe presumptive sentencing, in theory, can be a workable compromise between mandatory minimum sentencing and discretionary determinate sentencing policies. Under a presumptive sentencing law, a judge has discretion to depart from a statutory mandatory minimum sentence for certain mitigating circumstance.

As stated previously in this report, Connecticut shifted its sentencing policy for drug sale offenses from mandatory minimum to presumptive sentencing. However, for two reasons, it is uncommon for judges to use the presumptive authority to depart from the mandatory minimum penalty for a drug sale offense. First, because of plea bargaining, few defendants are convicted and sentenced to the mandatory minimum penalty. For those that are, judges do not typically depart from the mandatory minimum because it is found either through the plea negotiation or a trial to be the appropriate sentence for the crime and offender.

Second, interviewed judges stated they are reluctant to depart from mandatory minimum sentences even when they have the statutory authority to do so because of the political stigma and potential impact during the legislative reappointment process. Judges do not want to be labeled as "soft on crime," which they believe would be the backlash to using their discretion under a presumptive sentencing law even though it is statutorily authorized.

If the state's mandatory minimum sentencing policy was amended to presumptive sentencing, most judges interviewed believe the mitigating criteria should be legislatively defined. The statutory criteria would provide guidance for judicial discretion in departing from the mandatory minimum penalty. It would shield judges from any political backlash from using their discretion.

Based on the aforementioned, the impact of mandatory minimum sentencing laws on the criminal justice system and the crime rate is negligible. Few offenders are actually convicted and sentenced to a mandatory penalty. For those that are convicted, the statutory parole eligibility criteria and the parole board's parole eligibility calculation process eliminates any requirement to serve the mandatory minimum sentence, which is directly contrary to the original intent of the laws.

Public Perception of Mandatory Minimum Sentencing Laws

Based on national and state polling, the public's perception of basic mandatory minimum sentencing is at odds with both the legislative intent and the criminal justice system's application of the laws. Opponents of mandatory minimum penalties argue the laws result in too harsh sentences, racial and ethnic inequities in sentencing and incarceration rates, and prison overcrowding. Proponents of the sentencing policy believe the laws are applied to reduce crime

by locking more people up for longer periods and removing judicial discretion insures offenders are treated equally

In recent years, mandatory minimum sentencing laws have come under increasing attack. *It is argued the laws have not achieved the intended goals of reducing crime, curbing drug use, and ensuring serious and violent offender are incarcerated for longer periods. They have, it is further argued, resulted in serious, but unintended consequences: racial and ethnic inequities in the criminal case disposition and sentencing process; unduly harsh sentences; and prison overcrowding. It is doubted that mandatory minimum penalties have any significant deterrent effects on criminal behavior.*

Racial and ethnic disparity is a complex problem in the criminal justice system. The Commission of Racial and Ethnic Disparity in the Criminal Justice System[31] reported, for example, that African American and Latino/Hispanic defendants were more likely to be charged with felonies and the charges were more likely to be associated with mandatory minimum sentences. The commission reported Caucasian offenders have a lower incarceration rate than African American or Latino/Hispanic offenders. This rate is significantly below the national average for incarceration rates, and Connecticut ranks the highest in the United States in its level of disparity in the incarceration rates of Caucasian, African American, and Latino/Hispanic offenders.

Racial and ethnic disparity is a term that is often used interchangeably with overrepresentation, underrepresentation, and discrimination. The commission reported, "misuse of these terms can fuel emotionally and politically charged dialogue in negative ways, " and that "neither overrepresentation, underrepresentation, nor disparity necessarily imply discrimination."

There is not one identified cause or predictor of racial and ethnic disparity, overrepresentation, underrepresentation, or discrimination. They are often caused by various socio-economic and cultural issues and can be the unintended consequences of the state's criminal justice, social, and economic policies.

Impacting disparity, overrepresentation, underrepresentation and discrimination in sentencing rates will take a coordinated and comprehensive effort by the criminal justice system and other government-administered systems (e.g., education, housing, employement). With that said, however, any change to relax the mandatory minimum sentencing laws such as presumptive sentencing may be viewed by the public and opponents to the laws as a positive step.

[31] The Commission of Racial and Ethnic Disparity in the Criminal Justice System within the Judicial Branch was statutorily created in 2000 (P.A. 00-154), to compile research about and make recommendations addressing racial and ethnic disparity in Connecticut's adult criminal justice and juvenile justice systems. The commission's first report was published in 2002 and it released its second (covering 2003-2004) in January 2005.

Appendix A

Criminal Sentencing

To provide a context for a discussion of mandatory minimum sentences and enhanced penalties, this section summarizes Connecticut's criminal sentencing framework established by the penal code, which are the state's laws defining criminal offenses and their penalties. Non-custodial penalties such as fines, community service, restitution, and unconditional discharge will not be discussed.

Criminal Offenses

There are many different categories of crimes, and some offenses can be placed in more than one category. In general, criminal offenses are categorized as:

- *violent crimes* -- crimes against a person such as murder, manslaughter assault, sexual assault, robbery, arson, and kidnapping;
- *property crimes* -- crimes involving the theft or destruction of property such as arson, burglary, larceny, forgery, and auto theft;
- *public order crimes* -- crimes against public decency, order, and justice such as driving while under the influence of alcohol or drugs, stalking, harassment, disorderly conduct, trespass, perjury, and risk of injury;
- *"morals" crimes* -- include prostitution, solicitation, bigamy, and bribery;
- *"victimless crimes"* -- involve a willful and private exchange of illegal goods or services such as possession and sale of illegal drugs, gambling, and prostitution;
- *white-collar and corporate crimes* -- generally nonviolent offenses committed for financial gain by means of deception by persons using their special skills and opportunities such as environmental pollution, manufacture or sale of unsafe products, price fixing, forgery, tax fraud, and deceptive advertising;
- *organized crimes* -- unlawful acts by members of highly organized and disciplined associations engaged in supplying illegal goods and services such as gambling, prostitution, loan sharking, narcotics, and labor racketeering;
- *hate crimes* -- crimes committed against a person, property, or society motivated by bias or bigotry against a race, religion, an ethnic or national group, or a sexual-orientation group; and
- other categories such as *occupational crimes, offenses against the government,* and *offenses by the government*.

The penal code classifies the specific crimes within a category according to the degree or severity of the offense by identifying the type, classification, and degree of offense. Each denotes a specific aspect of the crime used in charging an offender with an offense and in imposing a penalty upon conviction of a crime.

Offense type. Crimes are identified as felonies or misdemeanors. A felony is a relatively serious criminal offense for which a convicted person may be sentenced to more than a year of incarceration or to death. A misdemeanor is any lesser offense not defined as a felony and is punishable by no more than a year of incarceration. Persons convicted of either a felony or misdemeanor offense are also subject to other types of penalties such as probation, conditional discharge, fine, and restitution.

There is a third type of crime: violation or infraction. A violation or infraction is a breach of a state or local law, such as driving and motor vehicle offenses (e.g., speeding), loitering, creating a public disturbance, and public intoxication. These offenses are generally less serious than a misdemeanor and are nonviolent. A person charged with a violation or infraction is issued a summons and generally not arrested and taken into custody. If guilty of the violation or infraction, he or she is not subject to any penalty other than a fine.[32]

Only certain felony and misdemeanor offenses are subject to mandatory minimum sentences and other sentencing enhancements. For this reason, violations and infractions will not be included for analysis in this study.

Offense class. The offense classification is a ranking system denoting the severity of the crime based on specific or special circumstances of the crime. The most common circumstances include:

- the victim's age (e.g., elderly or a minor);
- the victim's physical or mental status (e.g., blind, physically disabled, pregnant, or mentally retarded);
- the offender's age or status (e.g., more than two years older than the victim, not-drug-dependant);
- the total value of property damaged or stolen;
- the type or amount of illegal drug possessed, sold, or manufactured;
- the location of the offense (e.g., proximity to a school, day care, or public housing);
- whether a weapon was used and the type of weapon used during commission of the underlying offense; and
- the severity of the injury to the victim.

All felony offense types are classified as class A, B, C, or D and misdemeanor offenses as class A, B, or C. Class A is the most serious ranking and class D the least (or class C for misdemeanors). As will be discussed later in this section, Connecticut's penal code sets the penalty guidelines based on this crime classification unless a specific penalty is established (e.g., capital felony, unclassified felony, mandatory minimum sentence).

[32] There is a process whereby a person charged with a violation or infraction may plead not guilty and request a hearing to dispose of the case rather than admit guilty and pay the fine. The defendant, if found guilty after a hearing, is subject to a fine plus any court costs.

The penal code defines two other offense classes: capital and unclassified. A capital offense is punishable by a death sentence or life in prison without the possibility of parole -- meaning the defendant's natural life. A capital felony is: murder of a peace officer, kidnap victim, sexual assault victim, multiple victims, or a victim under 16; murder for financial gain; murder committed by a defendant with a prior murder conviction or serving a life sentence; and murder committed during the commission of another felony offense.

Unclassified felony and misdemeanor crimes are not specifically classified as class A, B, C, or D within the penal code, but have the penalties identified within the statutory offense definition rather than the sentencing guidelines. In some cases, as will be discussed, the unclassified crime statutes have been challenged and the penalty is, therefore, based on case law. Unclassified felony crimes include: arson murder; possession, sale, manufacture, or distribution of illegal drugs; and certain firearm and weapon violations (e.g., carrying a pistol without a permit, illegally altering firearm identifications, illegally possessing a weapon in a motor vehicle).

Offense degree. The degree of the offense is the third way in which the severity, circumstances of the crime, and culpability of the defendant are defined for use in charging a defendant with a crime and, upon conviction, imposing a penalty. Crimes are ranked based on the specific circumstances of the crime as first, second, third, fourth, fifth, or sixth degree with the first degree denoting the most serious crime.

The penal code generally identifies the defendant's culpability in terms of whether he or she intentionally, knowingly, recklessly, or negligently committed a crime. Each carries a different legal standard (CGS 53a-3).

- A person acts *intentionally* with respect to a crime when his or her conscious objective is to cause such result or to engage in such conduct.
- A person acts *knowingly* when he or she is aware that his or her conduct is of a criminal nature or that such circumstance exists.
- A person acts *recklessly* with respect to a crime when he or she is aware of and consciously disregards a substantial and unjustifiable risk that will occur as a result of his or her conduct or that such circumstance exists.
- A person act with *criminal negligence* when he or she fails to perceive a substantial and unjustifiable risk will occur as a result of his or her conduct or that such circumstance exists.

Severity for many crimes is determined based on the victim's injury, the amount of force used, and/or the weapon involved in commission of the crime. The Connecticut penal code defines different standards for injuries and weapons.

While the offense classification and degree do not necessarily correspond, that is an offense in the first degree is not necessarily a class A felony, the offense degree is defined based on many of the same factors (e.g., victim's age or physical or mental status, offender age or status, involvement of a weapon and type of weapon, value of property damaged or stolen, type

and weight of illegal drug, severity of the victim's injury). The primary difference between offense classification and degree is offense degree is used to charge a defendant whereas the classification is used to determine the appropriate penalty based on the statutory sentencing guidelines as discussed below. Both are used during the plea bargaining process, which is summarized in Section 3, to negotiate a guilty plea and sentence recommendation.

Criminal Sentence Guidelines

The penal code authorizes several sentences that a judge may impose upon a person convicted of a criminal offense including:

- imprisonment in a state correctional facility;
- probation supervision;
- conditional or unconditional discharge;
- fine;
- special parole;
- financial restitution;
- community service; and
- a diversionary and alternative incarceration sanction.[33]

Criminal sentencing is complex. A single sentencing option or a combination of options may be imposed and a sentence may be subject to certain sentencing enhancements, restrictions, exemptions, and offender eligibility criteria. An offender is often under the jurisdiction of more than one criminal justice agency (e.g., Department of Correction, Board of Pardons and Paroles, Court Support Services Division) throughout the duration of a single sentence. Therefore, although the focus of this study is on mandatory minimum sentences, it is necessary to understand Connecticut's criminal sentencing framework to have a context for reviewing the mandatory minimum and enhanced penalty sentencing schemes. As stated, only those sentence options under which an offender can be incarcerated will be examined.

Determinate sentences. The primary sentencing model in Connecticut is determinate sentencing. For any felony or misdemeanor offense committed on or after July 1, 1981,[34] the penal code calls for a fixed (or definite) prison term rather than a sentence framed by a minimum and maximum.

[33] For a detailed description of the state's alternative incarceration sentencing options refer to the Legislative Program Review and Investigations Committee's report on *Pre-trial Diversion and Alternative Sanctions* (December 2004).

[34] Felony offenses committed prior to July 1, 1981 were subject to an indefinite sentence for which a judge imposed a sentence of a minimum and maximum prison term and the Board of Parole determined the actual parole release date, which was generally the minimum term less any "good time" credits earned while in prison. In 1981, Connecticut shifted from an indeterminate sentencing model to determinate (or fixed) sentencing. An overview of sentencing reform in Connecticut is presented in Section 3.

In theory, a judge has unilateral discretion in imposing a determinate sentence. However, in practice, a judge is constrained by statutory guidelines that establish the sentencing range based on the offense type, class, and degree and other sentencing requirements and enhancements. In selecting, calculating, and imposing the type and length of a sentence, a judge may consider the circumstances of the crime, the defendant's criminal history, aggravating and mitigating factors set forth in pre-sentencing reports and other documents, and the attitude of the victim, but the fixed prison term or community supervision (e.g., probation) sentence cannot be less than minimum term or more than the maximum term specified by the sentencing guidelines.

Table A-1 lists the determinate sentencing guidelines for periods of incarceration for felonies and misdemeanors.

Table A-1. Statutory Felony and Misdemeanor Determinate Sentencing

Offense	*Sentence Guideline*
FELONY	
Capital felony	Execution or life without possibility of release*
Class A felony: Murder	Prison term not less than 25 years nor more than life**
Class A felony	Prison term not less than 10 years^ nor more than 25 years
Class B felony: Manslaughter in the first degree with a firearm	Prison term not less than 5 years nor more than 40 years
Class B felony	Prison term not less than 1 year nor more than 20 years
Class B felony of: (1) Assault in the first degree with intent to cause serious physical injury to another person or causes serious physical injury to another person or third person with a deadly weapon or dangerous instrument; (2) assault in the first degree on a victim at least 60 years old or who is blind, physically disabled, pregnant, or mentally retarded; (3) Aggravated sexual assault in the first degree; (4) Kidnapping in the second degree with a firearm; (5) Burglary in the first degree with explosives, deadly weapon, or dangerous instrument; and (6) Robbery in the first degree with a deadly weapon	Prison term not less than 5 years nor more than 20 years
Class C felony	Prison term not less than 1 year nor more than 10 years
Class C felony of: Manslaughter in the second degree with a firearm	Prison term not less than 3 years nor more than 10 years
Class D felony	Prison term not less than 1 year nor more than 5 years
Class D felony of: (1) Assault in the second degree on a victim 60 years or older or who is blind, physically disabled, pregnant, or mentally retarded; or (2) Criminal possession of a firearm or electronic defense weapon	Prison term not less than 2 years nor more than 5 years
Class D felony of: Assault in the second degree with a firearm on a victim 60 years or older or who is blind, physically disabled, pregnant, or mentally retarded	Prison term not less than 3 years nor more than 5 years
Class D felony of: Criminal use of a firearm or	Prison term of 5 years

Table A-1. Statutory Felony and Misdemeanor Determinate Sentencing	
Offense	***Sentence Guideline***
electronic defense weapon	
Unclassified felony	Sentence specified in statute defining the crime
MISDEMEANOR	
Class A misdemeanor	Prison term not to exceed 1 year
Class B misdemeanor	Prison term not to exceed 6 months
Class C misdemeanor	Prison term not to exceed 3 months
Unclassified misdemeanor	Sentence specified in statute defining the crime
* A sentence of life imprisonment without the possibility of release is authorized only for offenses committed on or after October 1, 1985 and is statutorily defined as the natural life of the defendant. ** A sentence of life imprisonment is statutorily defined as 60 years. ^The minimum 10-year sentence for a class A felony cannot be suspended or reduced and offenders are ineligible for probation. NOTE: In any prosecution for an offense based on the victim being pregnant or mentally retarded, it is an affirmative defense that the defendant did not know the victim was pregnant or mentally retarded. Source: Connecticut General Statutes Title 53a	

Currently, in most cases, convicted persons are no longer sentenced under the state's indeterminate sentencing guidelines, which apply only to crimes committed prior to July 1, 1981. However, there are still inmates serving "old" indeterminate prison sentences.

Probation. Probation is a non-custodial sentence of conditional liberty in which an offender is legally subject to the authority and under the supervision of the Judicial Branch. An offender may be sentenced to a period of probation supervision in lieu of or in addition to a period of incarceration if a judge finds:

- the present or extended incarceration of the defendant is not necessary for public safety;
- the defendant is in need of guidance, training, or assistance that can be effectively administered through probation supervision; and
- the sentence of probation in not inconsistent with the "ends of justice."

Persons convicted of a capital offense are ineligible for probation. Persons convicted of a class A felony are ineligible for probation in lieu of a prison term, but can be sentenced to a period of probation following a prison term.

Under a probation sentence, the judge has two options: suspended the entire prison term (suspended sentence) or suspend a specific period of the prison term (reduced sentence). A *suspended sentence* commonly refers to a sentence in which the total prison term is withheld (or postponed) contingent on the defendant's compliance with and successful completion of court-order supervision and/or other release conditions (e.g., financial restitution, community service, substance abuse treatment, anger management counseling). The offender is not incarcerated and is immediately transferred to the custody of the Judicial Branch's Court Support Services

Division, which administers the adult probation supervision program. An example of a suspended sentence is: one year incarceration suspended and three years probation.

A *split sentence* refers to a sentence in which only part of the total prison term is withheld (reduced sentence) contingent on the defendant's compliance with and successful completion of court-order supervision and/or other release conditions. The offender is incarcerated for the non-suspended prison term and is immediately transferred to the custody of the Department of Correction to begin serving the prison term. Upon discharge from prison, the offender is transferred to CSSD for probation supervision. An example of a split sentence is: five years incarceration suspended after three years plus three years probation. In this case, the offender would be incarcerated for three years and under probation supervision for three years upon his or her release from prison. (After a year and a half in prison the offender would be eligible for parole.[35] If granted parole by the Board of Pardons and Paroles, he or she would be placed in the community under the supervision of DOC for the remaining 18 months of the prison term.)

The statutory sentencing guidelines for probation sentences are listed in Table A-2.

Table A-2. Statutory Felony and Misdemeanor Probation Sentence Guidelines

Offense	*Probation Sentence*
Class A felony and certain class B, C, and D felonies involving: (1) injury or risk of injury to a child under age 16; (2) child pornography; and (3) sexual assault	Not less than 10 years nor more than 35 years
All other felony offenses (except class A)	Not more than 5 years
Class A misdemeanor	Not more than 3 years
Class B misdemeanor	Not more than 2 years
Class C misdemeanor	Not more than 1 year
Unclassified misdemeanor	Not more than 1 year if sentence guideline is 3 months or less imprisonment Not more than 2 years if sentence guideline is more than 3 months imprisonment
Source: Connecticut General Statutes Title 53a	

When ordering probation, a judge may impose certain release conditions that require the offender:

- be employed;
- participate in an educational or vocational training course;
- undergo medical, psychiatric, or sex offender treatment;
- refrain from contact with the victim and/or co-defendant of the crime;
- reside at a specific residence or halfway house;
- refrain from committing a new crime; and

[35] If convicted of a "serious, violent" offense, the offender is required to serve at least 85 percent of the court-imposed sentence to be eligible for parole.

- comply with any other condition necessary for supervision (e.g., electronic monitoring, curfew, random drug testing).

Noncompliance with the probation conditions[36] or an arrest for a new crime can result in the reinstatement of the suspended prison term thereby requiring the defendant be incarcerated. A judge can reinstate the suspended sentence in total or in part after a hearing or admission of the violation by the defendant. The suspended prison term serves as incentive for the offender to comply with the release conditions and successfully complete the period of probation.

A judge may, after a hearing and upon a showing of good cause, terminate probation supervision and release the offender from custody at any time during the length of the sentence except for persons convicted of and sentenced for a number of sexual assault offenses.

Conditional discharge is similar to probation, but it subjects the offender to a lesser standard for release and community supervision. To impose a sentence of conditional discharge, a judge must find: (1) the present or extended incarceration of the defendant is not necessary for public safety; and (2) probation supervision is not appropriate. The sentencing guidelines for conditional supervision are the same as those for probation (see Table A-2).

Special parole. Special parole is another post-incarceration, community supervision sentencing option for offenders sentenced to more than two years. It functions much like discretionary parole except that it is mandatory and imposed by a judge at sentencing rather than granted at the discretion of the Board of Pardons and Paroles.

An offender sentenced to more than two years incarceration can also be sentenced to a period of special parole of not less than one year nor more than 10 years. A period of special parole exceeding 10 years can be imposed upon conviction for: risk of injury to a child involving sexual contact; sexual assault in the first degree; aggravated sexual assault in the first degree; sexual assault in a spousal or cohabitating relationship; sexual assault in the second degree; sexual assault in the third degree; and sexual assault in the third degree with a firearm. Offenders sentenced as persistent dangerous felony or persistent serious felony offenders can also be sentenced to more than 10 years of special parole.

If a parolee violates a condition of release, the board can revoke parole or special parole and the parolee returned to prison. The board can re-parole the offender at any time during the remaining period of the prison term or special parole or can require the offender remain in prison.

[36] A violation of probation (VOP) can be technical or a criminal offense. A technical VOP is misbehavior by an offender under supervision that is not by itself a criminal offense and generally does not result in arrest such as failing to report for a scheduled office visit, missing a curfew, lack of employment, or testing positive for drug or alcohol use. CSSD has several sanction options including incarceration to respond to a technical violation, but generally offenders are not returned to prison. A VOP is a criminal offense (felony or misdemeanor) when the offender violates any condition of probation or commits a new crime. Upon the motion of a probation officer, a judge issues an arrest warrant for the offender. Conviction for a VOP can result in imposition of the full sentence for the original offense, modification of the original conditions of probation, extension of probation supervision, revocation of the original sentence and imposition of a new sentence.

Appendix B

Connecticut Drug Laws

Existing law makes it illegal for persons of any age to possess, sell, distribute, manufacture, or transport controlled substances and narcotic or hallucinogenic drugs, the most common of which are heroin, powdered cocaine and cocaine in a free-base form ("crack"), and marijuana. However, the *use* of a controlled drug or substance is not expressly prohibited. Sanctions or penalties imposed for violation of the drug laws include incarceration, fines, alternative incarceration sanctions, and mandatory treatment programs.

The state's drug laws are contained in Chapter 420b of Title 21a of the Connecticut General Statutes, relating to consumer protection, and are based on the federal Controlled Substances Act (21 USC 801 *et seq.*). Although the laws specify criminal sanctions, they are not part of the penal code. Drug crimes are, therefore, unclassified felonies and misdemeanors.

Illegal drugs. Controlled drugs are statutorily defined as those:

- containing any quantity of a substance listed in the federal Controlled Substance Act;
- designated as a depressant or stimulant drug pursuant to federal food and drug laws; or
- designated by the state commissioner of consumer protection as having a stimulant, depressant, or hallucinogenic effect and a tendency to promote abuse or dependency.

The drugs are statutorily classified as amphetamine, barbiturate, cocaine (powdered or free-base), cannabis, hallucinogenic, morphine, or stimulant and depressant types. Narcotic substances include morphine, opium, opiates, cocaine, cocoa and salts, and derivatives having similar physiological effects and potential for abuse.

Drug crimes and penalties. Table B-1 lists the existing state laws regarding the possession and sale of illegal and controlled substances and the penalties for those crimes. As shown and discussed in Section 1 of this report, some drug crimes carry mandatory minimum penalties while others have set penalties, which can be suspended or reduced in accordance with the sentencing rules set forth in the penal code.

Table B-1. Connecticut Drug Laws			
CGS	***Offense***	***Sentence Guideline***	***Mandatory Minimum***
DRUG POSSESSION			
21a-267(a)	Possession with intent to use drug paraphernalia*	Imprisoned for not more than 3 months (class C misdemeanor)	
21a-267(b)	Deliver or possess or manufacture with intent to deliver drug paraphernalia	Imprisoned for not more than 1 year (class A misdemeanor)	
21a-267(c)	Violation of subsec. (a) or (b) within 1,500 feet of a school by a non-student		1 year in addition and consecutive to prison term for underlying offense
21a-279(a)	Possess any quantity of any narcotic	1st offense: imprisoned not more than 7 years and/or fined not more than $50,000 2nd offense: imprisoned not more than 15 years and/or fined not more than $100,000 3rd and subsequent offenses: imprisoned not more than 25 years and/or fined not more than $250,000	
21a-279(b)	Possess any quantity of hallucinogenic other than marijuana or 4 ounces or more of cannabis-type substance	1st offense: imprisoned not more than 5 years and/or fined not more than $2,000 2nd and subsequent offenses: imprisoned not more than 10 years and/or fined not more than $5,000	
21a-279(c)	Possess any quantity of any controlled substance other than narcotic, hallucinogenic other than marijuana, or less than 4 ounces of cannabis-type substance	1st offense: imprisoned not more than 1 year and/or fined not more than $1,000 2nd and subsequent offenses: imprisoned not more than 5 years and/or fined not more than $3,000	
21a-279(d)	Violation of subsec. (a), (b), or (c) within 1,500 feet of school or day care by non-student	Alternative sentence for subsec. (a) & (b) and for subsequent offense under subsec. (c): indeterminate prison term not to exceed 3 years with conditional early release by DOC commissioner	2 years in addition and consecutive to prison term for underlying offense of subsec. (a), (b), or (c)

Table B-1. Connecticut Drug Laws			
CGS	***Offense***	***Sentence Guideline***	***Mandatory Minimum***
DRUG POSSESSION			
DRUG SALE**			
21a-277(a)	Sale of any hallucinogenic or narcotic substance other than marijuana	1st offense: imprisoned for not more than 15 years and/or fined not more than $50,000 2nd offense: imprisoned for not more than 30 years and/or fined $100,000 3rd and subsequent offenses: imprisoned for not more than 30 years and/or fined not more than $250,000	
21a-277(b)	Sale of any controlled substance except a hallucinogenic or narcotic other than marijuana	1st offense: imprisoned for not more than 7 years and/or fined not more than $25,000 2nd and subsequent offenses: imprisoned for not more than 15 years and/or fined not more than $100,000 Alternative sentence for subsec. (a) & (b): indeterminate prison term not to exceed 3 years with conditional early release by DOC commissioner	
21a-278(a)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: • 1 oz or more of heroin, methadone, • ½ oz or more of cocaine or cocaine in free-base form ("crack") • 5 milligrams or more of substance containing lysergic acid diethylamide (LSD)		5 years (to a maximum of life) except if at time of crime (1) defendant was under 18; (2) defendant's mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278(b)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: • any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine • 1 kilogram or more		5 years for first offense or 10 years for subsequent offenses except if at time of crime (1) defendant was under 18; (2) defendant's mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause &

Table B-1. Connecticut Drug Laws			
CGS	***Offense***	***Sentence Guideline***	***Mandatory Minimum***
DRUG POSSESSION			
	of cannabis-type substance		crime was nonviolent as determined by judge
21a-278a(a)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependant person to a minor under 18 who is at least 2 years younger		2 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
21a-278a(b)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent in, or, or within 1,500 feet of school, public housing, or day care center		3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 except upon showing of good cause & crime was nonviolent as determined by judge
21a-278a(c)	Employ, hire, use, persuade, induce, entice, or coerce a minor under 18 to sell drugs (under 21a-277 or 21a-278)		3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
OTHER OFFENSES			
21a-268	Misrepresentation of substance as controlled substance	Imprisoned not more than 1 year or more than 5 years (class D felony)	

*"Drug paraphernalia" refers to equipment, products, and materials used, tended for use, or designed for use in planting, cultivating, growing, harvesting, manufacturing, compounding, producing, processing, testing, packaging, storing, concealing, ingesting, inhaling, or otherwise introducing into the human body any controlled substance.
**"Drug sale" is defined as any form of delivery including barter, exchange or gift, or offer therefore. For the purposes of this study sale also includes manufacture, distribution, dispensing, or administration.
Source: Connecticut General Statutes

Appendix C

Persistent Offender Laws

Table C-1. Persistent Offender Sentencing Criteria and Guidelines

Category	*Currently Convicted of:*	*Prior Conviction & Incarceration of a year or more* for:*	*Penalty Enhancement*
Persistent Dangerous Felony Offender	Manslaughter Arson Kidnapping Robbery in the first or second degree Assault in the first degree Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm	Manslaughter Arson Kidnapping Robbery in the first or second degree Assault in the first degree Murder Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with a firearm Attempt to commit of any of the above listed crimes In any other state, any crime of which the elements are substantially the same as the above listed crimes	Not more than 40 years or life imprisonment
Persistent Dangerous Sexual Offender	Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm	Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm Attempt to commit any of the above listed crimes In any other state, any crime of which the elements are substantially the same as the above listed crimes	Prison term plus period of special parole that equal life (60 years)
Persistent Serious Felony Offender	A felony offense except those listed under Persistent Dangerous Felony Offender	Any felony offense except those listed under Persistent Dangerous Felony Offender	Sentence based on the next most serious degree of felony
Persistent Serious Sexual Offender	Person not qualified as Persistent Dangerous Sexual Offender and convicted of: Risk of injury to child under 16** Sexual assault in the first degree Aggravated sexual assault in the first degree Sexual assault in a spousal or cohabitating relationship Sexual assault in the second degree Sexual assault in the third degree Sexual assault in the third degree with	Risk of injury to child under 16** Sexual assault in the first degree Aggravated sexual assault in the first degree Sexual assault in a spousal or cohabitating relationship Sexual assault in the second degree Sexual assault in the third degree Sexual assault in the third degree with firearm	Prison term plus period of special parole that equal maximum sentence for next most serious degree of felony

Table C-1. Persistent Offender Sentencing Criteria and Guidelines			
Category	***Currently Convicted of:***	***Prior Conviction & Incarceration of a year or more* for:***	***Penalty Enhancement***
	firearm		
Persistent Larceny Offender	Larceny in the third, fourth, fifth, or sixth degree	Twice convicted of larceny in separate cases	Sentence based on class D felony (not less than 1 year or more than 5 years)
Persistent Felony Offender	Any felony other than class D felony	Twice convicted of a felony other than a class D felony in separate cases	Sentence based on the next most serious degree of felony provided sentence is not less than 3 years and not suspended or reduced
Persistent Offender of crimes involving bigotry or bias	Deprivation of rights, desecration of property, or cross burning Deprivation of civil rights by person wearing mask or hood Intimidation based on bigotry or bias in the first, second, or third degree	Deprivation of rights, desecration of property, or cross burning Deprivation of civil rights by person wearing mask or hood Intimidation based on bigotry or bias in the first, second, or third degree	Sentence based on the next most serious degree of felony or misdemeanor except if the crime is a class A misdemeanor the sentence is based on a class D felony
Persistent Offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or restraining order	Assault in the third degree (class A misdemeanor) Stalking in the second degree (class A misdemeanor) Threatening in the second degree (class A misdemeanor) Harassment in the second degree (class C misdemeanor) Criminal violation of a protective order (class D felony) Criminal violation of a restraining order (class A misdemeanor) Criminal trespass in the first or second degree (class A or B misdemeanor)	Within the preceding 5 years, convicted or released from incarceration for a conviction (whichever is later) of: Capital felony Class A felony Class B felony except promoting prostitution in the first degree or larceny in the first degree Class C felony except promoting prostitution in the second degree, bribery of a juror, or bribe receiving by a juror Assault in the first degree (class D felony) Assault in the second degree with firearm (class D felony) Assault on a victim who is elderly, blind, disabled, pregnant, or mentally retarded (class D felony) Assault with a firearm on a victim who is elderly, blind, disabled, pregnant, or mentally retarded (class D felony) Sexual assault in the third degree (class C or D felony) Sexual assault in the third degree with firearm (class B or C felony) Unlawful restraint in the first degree (class D felony) Burglary in the third degree (class D felony)	Sentence based on the next most serious degree of felony or misdemeanor except if the crime is a class A misdemeanor the sentence is based on a class D felony

Table C-1. Persistent Offender Sentencing Criteria and Guidelines			
Category	***Currently Convicted of:***	***Prior Conviction & Incarceration of a year or more* for:***	***Penalty Enhancement***
		Reckless burning (class D felony) Robbery in the third degree (class D felony) Criminal use of a firearm or electronic defense weapon (class D felony) Assault in the third degree (class A misdemeanor) Stalking in the second degree (class A misdemeanor) Threatening in the second degree (class A misdemeanor) Harassment in the second degree (class C misdemeanor) Criminal violation of a protective order (class D felony) Criminal violation of a restraining order (class A misdemeanor) Criminal trespass in the first degree (class A misdemeanor) Criminal trespass in the second degree (class B misdemeanor)	
Persistent operating while under the influence felony offender	Manslaughter in the second degree with motor vehicle (class C felony) Assault in the second degree with motor vehicle (class D felony) Operating a motor vehicle while under the influence of alcohol or drugs (DUI)	Prior to the commission of the current crime and within the preceding 10 years convicted of: Manslaughter in the second degree with motor vehicle (class C felony) Assault in the second degree with motor vehicle (class D felony) Operating a motor vehicle while under the influence of alcohol or drugs (DUI) In any other state, any crime of which the elements are substantially the same as the above listed crimes	Sentence based on the next most serious degree of felony

*Conviction and incarceration in a Connecticut, other state, or federal correctional institution.
**Risk of injury to a minor (CGS 53-21(a)(2)) involves contact with the intimate parts of a child under 16 or to subject a child under 16 to contact the intimate parts of the offender in a sexual or indecent manner likely to impair the health or morals of the child.
Source: Connecticut General Statute